



November 22, 2024

The Honorable Debbie-Anne A. Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: California Independent System Operator Corporation
Docket No. ER25-____-000**

**Filing of Development Agreement Between the CAISO and
Great Basin Transmission, LLC Regarding SWIP-North
Transmission Project, Request for Waiver of Notice
Requirement, and Request for Privileged Treatment**

Dear Secretary Reese:

The California Independent System Operator Corporation (CAISO) submits for filing and acceptance the Southwest Intertie Project – North Development Agreement (Development Agreement)¹ between the CAISO and Great Basin Transmission, LLC (Great Basin).² The Development Agreement is necessary to facilitate the development of the Southwest Intertie Project-North (SWIP-North Project or Project), a project that will meet California planning portfolios as the only active transmission solution that will give load-serving entities in California direct access to Idaho wind-powered generation, in addition to providing other economic benefits the CAISO has identified in its transmission planning process. The CAISO found in its transmission planning process that the Project is the most cost-effective, timely, and efficient solution to meet an identified public policy need (as well as to provide other benefits).

As described in the Development Agreement, CAISO ratepayers will ultimately fund 77.169 percent of the total cost of the Project through a transmission revenue requirement to be submitted to the Commission. In

¹ The CAISO submits this filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Commission's regulations, 18 C.F.R. Part 35. The CAISO is designating the Development Agreement as Service Agreement No. 8453 under the CAISO tariff. Capitalized terms not otherwise defined in this transmittal letter have the meanings set forth in appendix A (master definitions supplement) to the CAISO tariff.

² The Development Agreement also refers to Great Basin as the Project Sponsor and refers to the CAISO and Great Basin together as the Parties or individually as a Party.

exchange the CAISO will receive operational control of entitlements to a portion of the transmission capacity on SWIP-North Project facilities to be built and upgraded in Idaho and Nevada and on existing transmission facilities in Nevada, the One Nevada Transmission Line (ON Line). This will enable Idaho wind-powered generation to be delivered directly to the CAISO.

As discussed below, the U.S. Department of Energy (DOE) will initially hold and fund the remaining capacity of the Project as a backstop to another utility's involvement.³ Given the unique circumstances here and the specific, and separate, cost-sharing arrangements, the CAISO is pursuing the Project under the Development Agreement as a voluntary agreement in accordance with the Commission's Policy Statement on *State Voluntary Agreements to Plan and Pay for Transmission Facilities* (Policy Statement).⁴ These circumstances include: (1) the CAISO is only receiving entitlements on a portion of the Project's capacity; (2) DOE will hold (and pay for) the remaining capacity on the Project pursuant to its own separate contractual arrangements with Great Basin's affiliate; (3) unlike other transmission projects the CAISO typically approves in its transmission planning process, the Project is not located in the CAISO's balancing authority area and the CAISO will not take operational control over the entire physical Project; and (4) as part of the Project the CAISO is obtaining entitlements from Great Basin on an existing transmission line in Nevada, which is operated by NV Energy, and no entity other than Great Basin has the right to such existing available capacity. This approach recognizes the separate arrangements between Great Basin and DOE; allows the CAISO to take advantage of cost-sharing benefits; enables the CAISO to utilize entitlements to existing capacity, thus avoiding the need for the CAISO to pay for the construction of extensive and extremely costly new transmission facilities; and allows the CAISO to obtain needed Idaho wind-powered capacity, thus supporting the California Public Utility Commission's (CPUC) integrated resource plan.

³ Great Basin has been negotiating with Idaho Power Company (Idaho Power) since December 2023 to fund the remaining 22.831 percent or 500 MW northbound capacity of the entitlements. In the interim, the DOE signed a facilitation agreement with Great Basin Northbound, LLC (a Great Basin affiliate and subsidiary of LS Power Transmission, LLC) for the same northbound capacity entitlements pursued by Idaho Power. This facilitation will allow Great Basin to commence the project sooner than the time Idaho Power needs to fulfill the conditions included in the December motion. The intent of the DOE grant is to fund the project if Idaho Power does not commit or if it does but does not receive approval from the Idaho Public Utilities Commission and then sell the entitlements to a utility. If Idaho Power does commit and receives timely approval from the IPUC, the expectation is that the DOE facilitation agreement would no longer be necessary and would be terminated.

⁴ 175 FERC ¶ 61,225 (2021).

The CAISO Board of Governors (CAISO Board) has approved the arrangement reflected in the Development Agreement as necessary to address an identified transmission need under the CAISO tariff, recognizing the state policy and economic benefits provided by the Project. The CAISO Board has also conditionally approved Great Basin's application to become a Participating Transmission Owner (Participating TO). The Project has been the subject of multiple rounds of stakeholder review and no stakeholder objected to the CAISO's proposed treatment of the Project or Great Basin's Participating TO application during these processes.

The CAISO has modeled the Development Agreement largely on the CAISO's *pro forma* Approved Project Sponsor Agreement (APSA) accepted by the Commission.⁵ The CAISO respectfully requests that the Commission accept the Development Agreement effective one day after the date of this filing—November 23, 2024—and grant any and all waivers the Commission may deem necessary to effectuate the Development Agreement. The CAISO also requests that the Commission grant privileged treatment for appendix E to the Development Agreement, which reflects sensitive commercial and financial information.

I. Background

A. Overview of the SWIP-North Project

Great Basin is an indirect, wholly owned subsidiary of LS Power Associates, L.P. Great Basin is the developer of the SWIP-North Project. The Project consists of: (1) a new 285-mile, 500 kilovolt (kV) transmission line (SWIP-North Line) that will run from the existing Midpoint substation located near Twin Falls, Idaho to the existing Robinson Summit substation located near Ely, Nevada;⁶ (2) expansion of the Midpoint and Robinson substation facilities to accommodate the interconnection and operation of the SWIP-North Line; (3) new 70-percent series compensation for the SWIP-North Line and for the existing ON Line, the existing 231-mile, 500 kV transmission line that runs from the Robinson Summit substation to the Harry Allen substation located near Las Vegas, Nevada; and (4) utilization of Great Basin's existing entitlements on the ON

⁵ Appendix A to the CAISO tariff defines the APSA as “[a]n agreement between an approved project sponsor and the CAISO establishing the terms and conditions under which the approved project sponsor will complete the siting and construction of the transmission facilities that the approved project sponsor was selected to construct and own under Section 24” of the CAISO tariff. The *pro forma* APSA is contained in appendix X to the CAISO tariff.

⁶ The SWIP-North Line will be located in the balancing authority area of NV Energy, which consists of Nevada Power Company and Sierra Pacific Power Company, and NV Energy will operate it.

Line.⁷ Great Basin plans to complete the Project by mid-2028.⁸ The CAISO will receive entitlements both on the new SWIP-North line and the existing ON Line to deliver Idaho wind-powered generation to the CAISO.

The ON Line connects to the DesertLink Line, an existing 59-mile, 500 kV transmission line that runs from the Harry Allen substation to the Eldorado substation in southern Nevada.⁹ DesertLink, LLC, which owns the DesertLink Line, is a Participating TO in the CAISO.¹⁰ Thus, the DesertLink Line extends the CAISO balancing authority area into a small portion of Nevada. Figure 1 below depicts the components of the SWIP-North Project, as well as the existing ON Line and DesertLink Line:

⁷ Appendix A to the Development Agreement describes these components of the SWIP-North Project in more detail. The ON Line is jointly owned by NV Energy and Great Basin Transmission South, LLC (GBT South or GBTS), an affiliate of Great Basin. The ON Line is located in the NV Energy balancing authority area. With the construction the SWIP-North Line, the ON Line may also be referred to as the SWIP-South Line.

⁸ Appendix B to the Development Agreement sets forth estimated milestone dates for the SWIP-North Project's construction. The Project has already achieved milestones that include a U.S. Bureau of Land Management (BLM) Right-of-Way Grant, a conditional BLM Notice-to-Proceed, and an approved Construction, Operation, and Maintenance Plan that includes key compliance requirements stipulated to by the BLM. See appendices A and E to the Development Agreement. Also, the SWIP-North Project has completed the National Environmental Policy Act process and has an environmental impact statement and BLM Record of Decision in that matter.

⁹ The DesertLink Line is also sometimes referred to as the Harry Allen to Eldorado (or HAE) Line.

¹⁰ See *DesertLink, LLC*, 161 FERC ¶ 61,126 (2017), *order approving settlement*, 165 FERC ¶ 61,075 (2018).

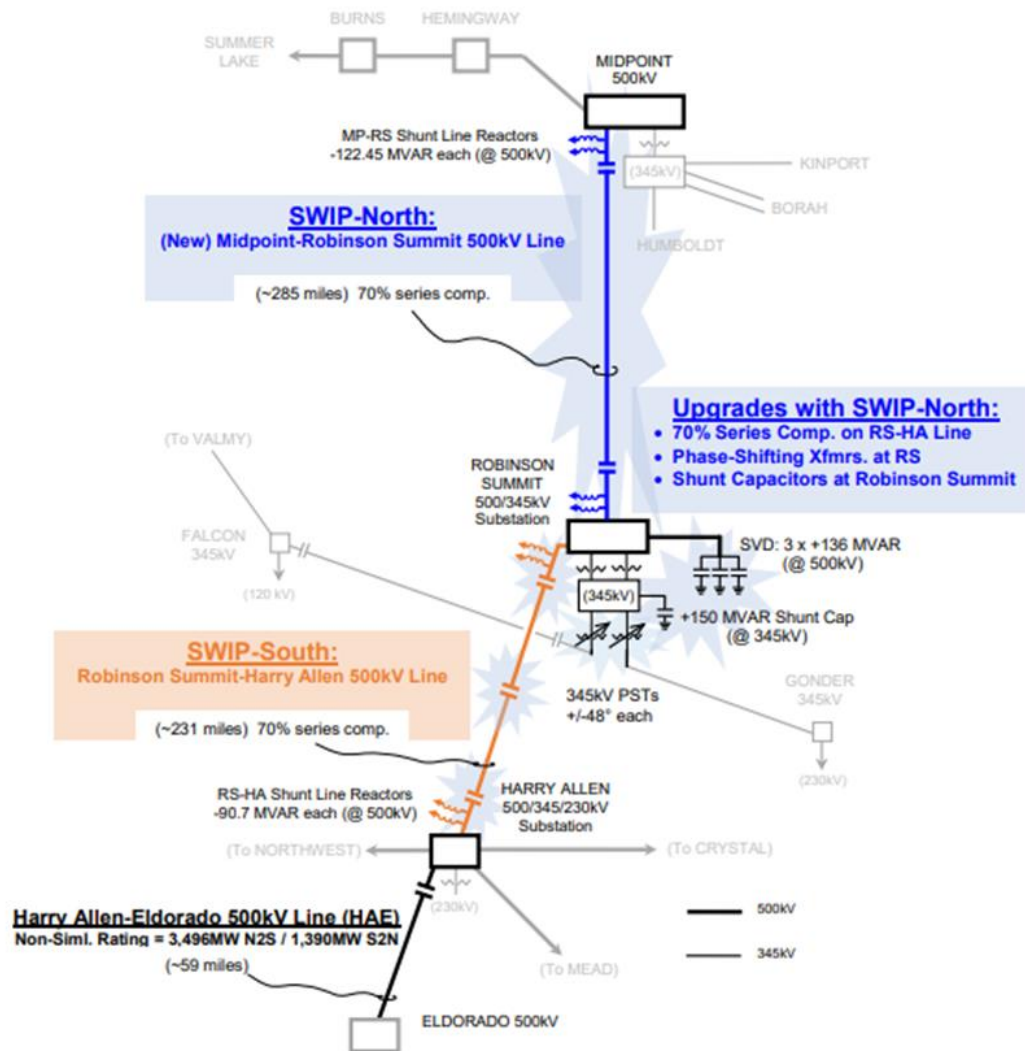


Figure 1

The Western Electricity Coordinating Council (WECC) has approved a path rating for the SWIP-North Line of 2,070 megawatts (MW) in the north-to-south direction and 1,920 MW in the south-to-north direction. The ownership, maintenance, and operation of the SWIP-North Line—including the treatment of its transmission capacity—will be governed by the Second Amended and Restated Transmission Use and Capacity Exchange Agreement (TUA) by and among Nevada Power Company and Sierra Pacific Power Company (*i.e.*, NV Energy, as noted above), Great Basin, and GBT South that has been revised or supplemented several times in amendments accepted by the Commission.¹¹ Under the currently effective TUA, completion of the SWIP-North Project will

¹¹ For a history of the amendments to the TUA, see the transmittal letter for NV Energy's July 1, 2020, filing in Docket No. ER20-2295-000.

trigger a capacity swap that will result in Great Basin receiving over half of the above-listed transmission capacity on the SWIP-North Line—specifically, 1,117.5 MW north to south and 1,072.5 MW south to north—with NV Energy holding the balance of the SWIP-North Line transmission capacity.¹² As part of this swap, Great Basin will also receive 1,117.5 MW north to south and 1,072.5 MW south to north capacity on the existing ON Line.

Great Basin, which holds a 100 percent ownership interest in the SWIP-North Project, will transfer 22.831 percent of that ownership interest to an affiliate in connection with DOE support for the Project, as described below in section I.B.1 of this transmittal letter, leaving Great Basin with a 77.169 percent ownership interest in the Project which will be turned over to CAISO operational control.

B. Benefits and CAISO Board Approval of the SWIP-North Project

The CAISO has determined the SWIP-North Project is the only active transmission solution that will give load-serving entities in California direct access to Idaho wind-powered generation, thereby benefiting California ratepayers. Each of the three most recent integrated resource planning portfolios provided by the CPUC as inputs to the CAISO's transmission planning process (for 2022-2023, 2023-2024, and 2024-2025) has called for approximately 1,000 MW of Idaho wind-powered capacity.¹³

As discussed in the transmission planning processes for 2021-2022 and 2022-2023, the CAISO's economic studies also demonstrated other economic benefits contributing to the overall value provided by the SWIP-North Project. Those benefits include increasing resource diversity, creating a parallel path to

¹² I.e., NV Energy will hold 952.5 MW of SWIP-North Line transmission capacity north to south and 847.5 MW of SWIP-North Line transmission capacity south to north.

¹³ Specifically, for the 2022-2023 transmission planning process, the final integrated resource planning portfolio included 1,062 MW from Idaho or Wyoming in the base case and 1,000 MW from Idaho in the sensitivity case. See *CAISO 2022-2023 Transmission Plan* at 6-7 & n.10, 102 (May 18, 2023) (2022-2023 Transmission Plan), available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>. For the 2023-2024 transmission planning process, the final integrated resource portfolio included 1,000 MW from Idaho in both the base case and the sensitivity case. See *CAISO 2023-2024 Transmission Plan* at 101, 108 (May 23, 2024), available at <https://www.caiso.com/documents/iso-board-approved-2023-2024-transmission-plan.pdf>. For the 2024-2025 transmission planning process, the draft integrated resource portfolio includes 1,000 MW in the proposed base case. See CPUC Staff Report, *Modeling Assumptions for the 2024-2025 Transmission Planning Process* at 30, 37, 61-62 (Feb. 2024), available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/2023-irp-cycle-events-and-materials/assumptions-for-the-2024-2025-tpp/modeling_assumptions_24-25tpp.pdf.

the California-Oregon Intertie (COI), reducing congestion costs on the COI, reducing renewable resource curtailment, and enabling the export of excess solar-powered generation from California (*i.e.*, from south to north) when not needed to serve load in California. Idaho Power separately, through its integrated resource planning process,¹⁴ studied the value the Project would provide by giving Idaho load access to power markets in the Desert Southwest and adding resource diversity to Idaho Power's portfolio. In accordance with CAISO tariff section 24.4.6.6, the CAISO found in its transmission planning process that the SWIP-North Project was the most cost-effective, efficient, and timely solution to meet an identified public policy need (and provide additional benefits).¹⁵

On May 18, 2023, the CAISO Board approved the 2022-2023 Transmission Plan, which specified that the CAISO would continue economic studies under the 2022-2023 transmission planning process for conducting a "detailed assessment" of the SWIP-North Project "as a transmission alternative to interconnect Idaho wind generators as proposed in the CPUC portfolio" and as "an alternative to mitigate COI congestion."¹⁶ Over the next six months, the CAISO studied the Project further and engaged with stakeholders.

The CAISO Board, on December 14, 2023, approved including the SWIP-North Project as a transmission solution in an addendum to the CAISO's 2022-2023 Transmission Plan, subject to satisfaction of four conditions as described below (the first of which the CAISO Board recently updated as this filing will describe).¹⁷ As explained in the CAISO management's memorandum to the

¹⁴ See Idaho Power, Integrated Resource Plan (Sept. 2023) available at <https://docs.idahopower.com/pdfs/AboutUs/PlanningForFuture/irp/2023/2023-irp-final.pdf>.

¹⁵ See CAISO 2022-2023 Transmission Plan, Addendum 1 - Draft (Updated) (Dec. 11, 2023), available at <https://stakeholdercenter.caiso.com/InitiativeDocuments/Addendum-1-Board-Approved-2022-2023-Transmission-Plan.pdf>.

¹⁶ 2022-2023 Transmission Plan at 117 (at row no. 1 under Table 4.7-1, entitled economic study requests). See also CAISO Board, *Decision on 2022-2023 Transmission Plan* (May 18, 2023), available at <https://www.caiso.com/documents/decisionon2022-2023transmissionplan-motion-may2023.pdf>. The CAISO continued the economic studies pursuant to its transmission planning process, which provides that "[t]he board-approved transmission plan may also include a description of transmission solutions for which additional studies are required before being presented to the board for approval following completion of the studies." Business practice manual for transmission planning process, section 4.10.4, available at <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Transmission%20Planning%20Process>.

¹⁷ See CAISO Board, *Decision on Southwest Intertie Project North* (Dec. 14, 2023), available at <https://www.caiso.com/documents/decisiononsouthwestintertieprojectnorth-motion-dec2023.pdf>. See also CAISO 2022-2023 Transmission Plan, Addendum 1 - Draft (Updated) (Dec. 11, 2023); Memorandum from Neil Millar, Vice President, Infrastructure & Operations Planning to CAISO Board, *Decision on Southwest Intertie Project (SWIP) North* (Dec. 11, 2023) (December 2023 Board Memorandum), available at

CAISO Board, the benefits of the Project “include resource diversity, creation of a parallel path to the California Oregon Interface (COI) line, reduction of congestion costs on COI, reduced renewable resource curtailment, and the ability to export excess solar from the state.”¹⁸ Moreover, as discussed in the presentation given to the CAISO Board, the Project “is cost-effective, reduces cost impact to California ratepayers, and delivers value through collaboration.”¹⁹

The CAISO Board’s approval included specifying that CAISO ratepayers would ultimately be responsible for funding the Commission-approved transmission revenue requirements for 77.169 percent of the total cost of the SWIP-North Project, in exchange for the CAISO receiving operational control of entitlements on the SWIP-North Line and the ON Line, and Idaho Power being responsible for the costs of the other 22.831 percent and also receiving entitlements on the SWIP-North Line and the ON Line.²⁰ The CAISO Board’s approval recognized that “[a]pproving assumption of operational control of entitlements on [the] SWIP-North [Line] and the existing ON Line will provide an

<https://www.caiso.com/documents/decisiononsouthwestintertieprojectnorth-memo-dec2023.pdf>; Presentation by Jeff Billinton, Director, Infrastructure Planning, to CAISO Board, *Decision on Southwest Intertie (SWIP) North* (Dec. 14, 2023) (December 2023 Board Presentation), available at <https://www.caiso.com/documents/decisiononsouthwestintertieprojectnorth-presentation-dec2023.pdf>. Under the transmission planning process, “[i]f, after completion of the additional studies, it is determined that the transmission solutions should be submitted to the board for approval, the CAISO will amend the board-approved transmission plan and post it on the website prior to the board meeting at which approval is sought.” The addendum to the 2022-2023 Transmission Plan was such an amendment. No stakeholder raised a concern about this approach.

¹⁸ December 2023 Board Memorandum at 6.

¹⁹ December 2023 Board Presentation at 6.

²⁰ The CAISO makes existing entitlements available through market awards in combination with the energy awarded in the market with different scheduling priorities through its market optimization, which is how the CAISO fulfills its role of transmission service provider and market operator. Great Basin’s transmission capacity entitlements will be subject to similar treatment, with the CAISO simply making the transmission capacity available to CAISO market participants in the same manner it makes transmission capacity available across the broader CAISO controlled grid, resulting in the transmission capacity being accounted for in the market optimization process and the market optimization outcome governing its eventual use. In addition, the CAISO engages in outage coordination to timely and accurately inform its market participants of transmission availability on non-CAISO transmission facilities. The CAISO expects to engage in a similar manner with NV Energy but does not expect to have approval or rejection rights over outage scheduling of Great Basin’s transmission capacity entitlement.

overall benefit to California ratepayers.”²¹ Stakeholders generally supported the CAISO Board’s approval of these entitlement arrangements.²²

Consistent with the CAISO’s transmission plan, the entitlements resulting from completion of the SWIP-North Line will be placed under CAISO operational control under the Transmission Control Agreement (TCA) by a new Participating TO.²³ Indeed, as discussed below in section II.B.3 of this transmittal letter, one of the conditions set by the CAISO Board for including the SWIP-North Project in the transmission plan is that Great Basin must receive CAISO Board approval of an application to become a Participating TO and execute the TCA—which approval the CAISO Board granted to Great Basin on October 4, 2024.²⁴ As part of that approval, the CAISO Board accepted the recommendations of CAISO management, including the finding that the north-to-south and south-to-north entitlements to be placed under the CAISO’s operational control will support the CPUC’s integrated resource planning portfolios and will provide other economic benefits as demonstrated by CAISO studies. As required by section 2.2.2 of the TCA, the CAISO posted Great Basin’s application for Participating TO status on

²¹ December 2023 Board Memorandum at 6. As discussed above, the SWIP-North Project will provide numerous benefits as a transmission solution and the CAISO Board approved it on that basis.

²² *Id.* at 4-5.

²³ Transmission owners that place their transmission facilities and entitlements under the CAISO’s operational control become Participating TOs pursuant to the TCA (designated as the CAISO’s FERC Electric Tariff No. 7) among the CAISO and Participating TOs. The TCA describes how the CAISO and each Participating TO will discharge its respective duties and responsibilities with regard to the operation of those facilities and entitlements. See *Cal. Indep. Sys. Operator Corp.*, 82 FERC ¶ 61,325, at 62,276-79 (1998).

²⁴ The CAISO Board may conditionally approve an application to become a Participating TO submitted by an entity that is developing but has not yet constructed a new transmission project or obtained entitlements on a facility under construction pending Commission approval of an amendment to the TCA and Great Basin’s transmission owner tariff which happens closer to energizing the transmission facilities.

See CAISO Board, *Decision on Southwest Intertie Project–North Participating Transmission Owner Application-Great Basin; Motion 1 (Department of Energy Commitment)* (Oct. 4, 2024), available at <https://www.caiso.com/documents/decision-on-southwest-intertie-project-north-participating-transmission-owner-application-great-basin-motion-1-oct-2024.pdf>. See also Memorandum from Neil Millar, Vice President, Infrastructure & Operations Planning to CAISO Board, *Decision on Southwest Intertie Project - North Transmission Plan Addendum Conditions and Participating Transmission Owner Application of Great Basin Transmission, LLC* (Sept. 27, 2024) (September 2024 Board Memorandum), available at <https://www.caiso.com/documents/decision-on-southwest-intertie-project-north-participating-transmission-owner-application-great-basin-memo-oct-2024.pdf>; Presentation by Deb Le Vine, Executive Director, Infrastructure Contracts & Management, to CAISO Board, *Decision on Southwest Intertie Project—North Participating Transmission Owner Application (Great Basin)*, available at <https://www.caiso.com/documents/decision-on-southwest-intertie-project-north-participating-transmission-owner-application-great-basin-presentation-oct-2024.pdf>.

the CAISO website for a 60-day stakeholder comment period. The CAISO received no comments.

Additionally at its October 4, 2024 meeting, the CAISO Board approved revisions to the original conditions to inclusion of the SWIP-North Project in the CAISO's 2023-2024 transmission plan, discussed under the following headings, in response to changed circumstances.²⁵

1. U.S. Department of Energy Funding for the Non-CAISO Portion of the SWIP-North Project Cost

The first condition for the CAISO Board's updated October 2024 approval was the acceptance of the DOE, in place of Idaho Power, funding the non-CAISO portion of the cost of the SWIP-North Project—*i.e.*, 22.831 percent of the total Project cost—in exchange for receiving entitlements to 500 MW of SWIP-North Line and ON Line transmission capacity south to north. This is an update to the first condition originally approved by the CAISO Board at its December 2023 meeting, which called for Idaho Power to file a rate case for that 22.831 percent of cost with the Idaho Public Utilities Commission (IPUC) and to receive IPUC approval by September 30, 2024.

On April 25, 2024, the Grid Deployment Office (GDO) of DOE announced that DOE had selected Great Basin to negotiate a capacity contract under the Transmission Facilitation Program, a GDO-administered program to satisfy a directive in the Infrastructure Investment and Jobs Act (sometimes also called the Bipartisan Infrastructure Law) for DOE to enter into contracts for capacity of eligible transmission projects.²⁶ The Transmission Facilitation Program “provide[s] Federal support to overcome financial barriers to developing new, large-scale transmission lines [and] upgrading existing transmission lines,” including by use of “[c]apacity contracts, through which DOE serves as an ‘anchor tenant.’”²⁷

²⁵ *Id.*

²⁶ See 42 U.S.C. § 18713(f)(1); DOE Press Release, *Biden-Harris Administration Announces Final Transmission Permitting Rule and Latest Investments to Accelerate the Build Out of a Resilient, Reliable, Modernized Electric Grid*, available at <https://www.energy.gov/articles/biden-harris-administration-announces-final-transmission-permitting-rule-and-latest>; DOE Fact Sheet, *Transmission Facilitation Program (TFP)*, available at https://www.energy.gov/sites/default/files/2024-04/042324_GDO_TFP_Fact_Sheet_SWIPN.pdf; DOE, *Transmission Facilitation Program Selections*, available at <https://www.energy.gov/gdo/transmission-facilitation-program-selections>.

²⁷ DOE, *Transmission Facilitation Program (TFP)*, available at https://www.energy.gov/sites/default/files/2024-02/2024-01-17%20TFP%20Fact%20Sheet%20CC%20Round%202%20RFP_0.pdf.

DOE later signed a Facilitation Agreement with GBT Northbound,²⁸ a Great Basin affiliate. Under the Facilitation Agreement, DOE will fund the 22.831 percent of the total Project cost (a commitment for up to \$331 million in funding) and receive 500 MW in entitlements on the SWIP-North Line and the ON Line south to north as described above. The Facilitation Agreement will allow GBT Northbound to advance the Project sooner than the time that Idaho Power would need to receive IPUC approval.²⁹ DOE's intent is to sell its 500 MW in entitlements to a utility, including potentially Idaho Power, or other market participant. If Idaho Power does commit and receives timely approval from the IPUC, the expectation is that the DOE facilitation agreement would no longer be necessary and would be terminated.

2. CPUC Reaffirmation of the Need for Idaho Wind-Powered Generation in its 2024-2025 Transmission Planning Process Portfolio Decision

The second condition the CAISO Board set was that the CPUC reaffirm the need for out-of-state wind-power generation in the CPUC's 2024-2025 transmission planning process portfolio decision. As explained above in section I.B of this transmittal letter, the CPUC has reaffirmed this need by calling for approximately 1,000 MW of Idaho wind-powered capacity in the integrated resource planning portfolio for 2024-2025 that is a key input in the CAISO's transmission planning process.³⁰

²⁸ GBT Northbound is also sometimes referred to as GBTN. Great Basin intends to transfer 22.831 percent of its 100 percent ownership interest in the SWIP-North line and the ON Line to GBTN, leaving Great Basin with a 77.169 percent ownership interest.

²⁹ Previously, Idaho Power was seeking the same 500 MW in entitlements on the SWIP-North Line and the ON Line south to north. Idaho Power has not yet filed for regulatory approval for the 22.831 percent of cost with the IPUC. The December 2023 Board Memorandum noted that "[s]hould Idaho Power not file a SWIP-related case with the IPUC or should the IPUC not approve Idaho Power's SWIP-related case, the [CA]ISO would reassess at that point and bring forward a revised recommendation for [CA]ISO Board approval upon further review, due diligence, and appropriate stakeholder engagement." December 2023 Board Memorandum at 6. The CAISO received CAISO Board approval on October 4, 2024 to revise this condition to accept DOE funding as the backstop to Idaho Power involvement.

³⁰ The CAISO added this second condition to address stakeholder concerns about increased cost estimates for the SWIP-North Project and the continued viability of Idaho wind-powered capacity. In addition, as discussed below in section II of this transmittal letter, the Development Agreement includes provisions designed to manage risk that will have the effect of reducing Project costs.

3. CAISO Board Approval of Great Basin as a Participating Transmission Owner

The third condition set by the CAISO Board was that Great Basin submit and receive CAISO Board approval of an application to become a Participating TO. As noted above, on June 18, 2024, Great Basin submitted an application to become a Participating TO with respect to: (a) 1,117.5 MW of entitlements that Great Basin holds on the planned SWIP-North Line and the existing ON Line north to south, and (b) 572.5 MW of entitlements that Great Basin holds on the SWIP-North Line and the ON Line south to north.³¹ At its October 4, 2024 meeting, the CAISO Board determined that Great Basin met or plans to meet all of the requirements to become a Participating TO.³² Accordingly, the CAISO Board approved Great Basin as a Participating TO subject to its executing the TCA and satisfying the fourth condition described immediately below.³³

³¹ Great Basin's application to become a Participating TO is available at <https://www.caiso.com/documents/great-basin-transmission-llc-participating-transmission-owner-application.pdf>. See also CAISO Market Notice, *Great Basin Transmission, LLC Submits New Participating Transmission Owner Application to California ISO* (June 24, 2024), available at <https://www.caiso.com/notices/great-basin-transmission-llc-submits-new-participating-transmission-owner-application-to-california-iso>. This CAISO market notice provided a standard 60-day period for any comments on Great Basin's application to become a Participating TO. No stakeholder filed comments.

³² As explained in the September 2024 Board Memorandum, sections 2.2.3 and 2.2.5 of the TCA permit a party to become a Participating TO if the CAISO determines that: (1) the transmission lines and associated facilities to be placed under the CAISO's operational control can be incorporated into the CAISO controlled grid without any material adverse impact on its reliability; (2) incorporating such transmission rights will not put the CAISO in breach of applicable reliability criteria and its obligations as a member of the WECC; (3) the CAISO has no outstanding objections regarding any of the applicant's transmission facilities or entitlements; (4) the applicant is capable of performing its obligations under the TCA; and (5) all applicable regulatory approvals of the applicant's transmission owner tariff and the transmission revenue requirement have been obtained. See September 2024 Board Memorandum at 3-5; see also CAISO tariff, section 4.3.1 ("Each Participant TO shall enter into the Transmission Control Agreement with the CAISO"). If Great Basin were to fail to meet any of these five requirements, the CAISO would not agree to accept Great Basin as a Participating TO.

³³ See CAISO Board, *Decision on Southwest Intertie Project–North Participating Transmission Owner Application–Great Basin; Motion 2 (PTO [Participating Transmission Owner] Application)* (Oct. 4, 2024), available at <https://www.caiso.com/documents/decision-on-southwest-intertie-project-north-participating-transmission-owner-application-great-basin-motion-2-oct-2024.pdf>.

4. Commission Acceptance of Great Basin Transmission Owner Tariff and Transmission Revenue Requirement

Fourth and finally, the CAISO Board approved the inclusion of the SWIP-North Project in the CAISO's 2023-2024 transmission plan subject to Great Basin's filing, and the Commission accepting, a transmission owner tariff and a transmission revenue requirement rate structure. Great Basin explained that "Commission acceptance of Great Basin's Transmission Owner Tariff and associated transmission rate structure is an action that all new CAISO Participating Transmission Owners must complete," and "Great Basin anticipates completing this requirement in the normal course subject to Commission approval."³⁴ These actions will be taken closer to the energization of the Project which is expected in 2028.

II. The Development Agreement

The September 2024 Board Memorandum noted that Great Basin will execute a "SWIP – North Agreement" (*i.e.*, the Development Agreement) to establish certain requirements during construction of the SWIP-North Project.

Great Basin will own and construct 77.169 percent of the SWIP-North Project, and GBT Northbound will own and construct the remaining 22.831 percent. The CAISO has agreed, consistent with the CAISO Board approval described above in section I.B of this transmittal letter, to provide funding for the SWIP-North Project equal to Great Basin's 77.169 ownership percentage of the total Project cost, in exchange for the CAISO's receiving operational control of the entitlements listed in Great Basin's application to become a Participating TO—*i.e.*, 1,117.5 MW of entitlements to Great Basin's transmission capacity north to south and 572.5 MW of entitlements to Great Basin's transmission capacity south to north.³⁵ As explained above, the package of entitlements associated with the SWIP-North Project will provide benefits to customers in the

³⁴ Petition of Great Basin Transmission, LLC for a Declaratory Order Approving Incentive Rate Treatment, Docket No. EL24-127-000, at 17 (July 11, 2024). The Commission has not yet issued an order on the cited Great Basin petition.

³⁵ As discussed above with regard to condition (1) set by the CAISO Board (see section I.B.1 of this transmittal letter), DOE will fund the other 22.831 percent of the total SWIP-North Project cost in exchange for receiving entitlements to 500 MW of SWIP-North Line and ON Line transmission capacity south to north. The CAISO's funding percentage of 77.169 percent was derived as follows: the sum of the CAISO's operational control of entitlements on the SWIP-North Line north to south (1,117.5 MW) and on the SWIP-North Line south to north (572.5 MW), which equals 1,690 MW, divided by the sum of the Great Basin transmission capacity eligible for entitlements on the SWIP-North Line north to south (1,117.5 MW) and on the SWIP-North Line south to north (1,072.5 MW), which equals 2,190 MW. The non-CAISO entitlements on the SWIP-North Line south to north (500 MW) divided by that 2,190 MW amount equals the 22.831 percent of total Project cost for which DOE will be responsible.

region and the costs will be recovered through the regional transmission access charge. The CAISO and Great Basin have entered into the Development Agreement to effect this arrangement.

The CAISO has modeled the Development Agreement largely upon the CAISO's *pro forma* APSA and governs the relationship between Great Basin and the CAISO during project construction and leading up to the transfer of the entitlements to SWIP-North Line's transmission capacity from Great Basin to the CAISO. The CAISO discusses the provisions of the Development Agreement further below.

This is not the first time the CAISO has filed an entitlement agreement modeled on the *pro forma* APSA for Commission acceptance. In 2020, CAISO submitted an Entitlement Agreement with Citizens S-Line Transmission LLC (Citizens S-Line Transmission) that specified the terms and conditions under which Citizens S-Line Transmission would finance upgrades to Imperial Irrigation District's (IID) existing S-Line in exchange for entitlement rights to incremental transfer capability on the S-Line that Citizens S-Line Transmission would obtain on behalf of the CAISO. The CAISO explained that Citizens S-Line Transmission "will enter into the CAISO Transmission Control Agreement to become a participating transmission owner effective upon receipt of its entitlement to the S-Line incremental transfer capability from IID and will turn over its leased incremental transfer capability to the CAISO's Operational Control as an entitlement."³⁶ The Commission accepted the Entitlement Agreement between the CAISO and Citizens S-Line Transmission without comment.³⁷ The S-Line entitlement right was turned over to CAISO operational control July 1, 2024.

A. The Development Agreement Satisfies the Voluntary Agreement Approach Established by the Commission

The CAISO is pursuing the SWIP-North Project under the Development Agreement as a voluntary entitlements agreement to further the state of California's public policy for procurement of out-of-state wind in the most cost-effective way, and in the context of the Commission's Policy Statement regarding State Voluntary Agreements to Plan and Pay for Transmission Facilities. As noted in the Policy Statement, Order No. 1000 allows for the negotiation of voluntary alternative cost sharing arrangements, particularly to support transmission needs driven by public policy requirements.³⁸ In particular, the

³⁶ Transmittal letter for filing of Entitlement Agreement between the CAISO and Citizens S-Line Transmission, Docket No. ER21-196-000, at 5 (Oct. 23, 2020) (internal citation omitted).

³⁷ *Cal. Indep. Sys. Operator Corp.*, Commission Letter Order, Docket No. ER21-196-000 (Dec. 14, 2020).

³⁸ Policy Statement, 175 FERC ¶ 61,225, at P 3, citing *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 at PP 561, 724 (2011) (Order No. 1000), *order on reh'g & clarification*, Order No. 1000-A, 139

Policy Statement recognizes that voluntary agreements may be between two or more public utility transmission providers to plan and pay for new transmission facilities.³⁹ Due to the number of unique circumstances of this Project and arrangement of the cost-sharing agreement discussed below, the CAISO determined it was not appropriate to meet the policy objective served by the Project through a competitive solicitation process.

First, the CAISO is only pursuing entitlements for a portion of the Project. This includes entitlements both on new construction (*i.e.*, the SWIP-North Line) and on the existing ON Line. This is unlike transmission solutions the CAISO typically approves in the transmission planning process where the CAISO approves building an entirely new transmission line, and the entire facility is under the CAISO's operational control and within the CAISO's balancing authority area. As indicated above in section I.A of this transmittal letter, the Project will not be in the CAISO balancing authority area, and the CAISO will not have operational control of the entire Project. DOE has agreed to participate in and partially fund the Project. The CAISO expects the DOE funding to serve as a temporary backstop funding to another utility's participation, which may ultimately be Idaho Power. Given the nature of the CAISO's participation in the Project and the parties involved, a voluntary agreement approach pursuant to the Commission's Policy Statement is the appropriate means for effectuating the arrangement. The CAISO seeks to move forward with the Project forward as a regional policy-driven project, jointly with another utility (and DOE), to take advantage of cost-sharing benefits.

Second, the Project is by far the most cost-effective and efficient solution to meet the public policy need identified in the transmission planning process, in large part because it utilizes capacity on existing transmission facilities, *i.e.*, the ON Line versus building a new 516-mile, 500 kV transmission line. Only Great Basin has the entitlement to that existing capacity. No other entity seeking to deliver Idaho wind-powered generation to the CAISO would have a right to that existing capacity. As such, any alternative solution would require the construction of an entirely new transmission line to replace the existing capacity on the ON Line. As indicated above, the ON Line extends for 231 miles. DOE's agreement to receive a portion of the capacity in the Project allows the CAISO to receive only the amount of capacity it needs to meet the public policy objective and not more. Building an entirely new line to replicate the existing ON Line capacity clearly would be neither cost-effective nor efficient. Further, building an entirely new and different line (that does not rely on extensive existing and available capacity) to bring Idaho wind-powered generation to the CAISO would be not only a significantly more costly and inefficient alternative, it would raise

FERC ¶ 61,132, at PP 728-729 (2012); *see also* Order No. 1000, 136 FERC ¶ 61,051, at P 209 n.189.

³⁹ Policy Statement at P 3.

additional siting and right-of-way issues and would be more environmentally impactful.

Third, the cost-sharing arrangement and reduction in risk associated with cost makes this Project the least-cost approach to meeting the CPUC's identified resource needs. DOE is not participating in or funding any other transmission project that might bring Idaho wind-powered generation to the CAISO balancing authority area. The CAISO's share of the project is approximately \$950 million, with a total project cost of \$1.23 billion (\$4.3 million/mile total, with \$3.3 million/mile being allocated to CAISO ratepayers).

Fourth, the SWIP-North Project is a near-shovel-ready project that has already achieved key milestones such as a BLM Right-of-Way Grant, an approved Construction, Operation, and Maintenance Plan, and a Conditional Notice-to-Proceed. Thus, it can become operational far sooner than any other alternative solution. Apart from meeting CPUC resource planning portfolio in the most cost-effective way, the SWIP-North Project also provides certain additional economic benefits such as resource diversity, creation of a parallel path to and reduction of congestion costs on COI, reduced renewable resource curtailment, and the ability to export excess solar-powered generation from the state. Great Basin has already taken action to secure major equipment and associated manufacturing slots to mitigate against schedule delays and cost increases, directly benefiting CAISO ratepayers.

Finally, the CAISO needed to pursue the Project to support the CPUC resource portfolio calling for 1,000 MW of Idaho wind-powered generation to be procured by load-serving entities in California. As recognized in the Policy Statement, "Voluntary Agreements may allow state-prioritized transmission facilities to be planned and built more quickly than would comparable facilities that are planned through the regional transmission planning process(es)."⁴⁰ With an expected online date in 2028, the Project is the sole known transmission project that would serve California load-serving entities in accessing wind resources in Idaho in the timeframe needed to support integration of Idaho wind-powered generation.

For the foregoing reasons, the Commission should find that the voluntary agreement approach set forth in the Policy Statement is appropriate for the

⁴⁰ *Id.* at P 2. The Commission has recognized elsewhere that the voluntary agreement approach "is a supplementary transmission planning and cost allocation mechanism" to transmission planning and cost allocation under Order No. 1000. *PJM Interconnection, LLC*, 179 FERC ¶ 61,024, at P 2 (2022). In any event, the CAISO stresses it did approve the Project as the most cost-effective and efficient solution to meet an identified public policy need through its Commission-approved, Order No. 1000 transmission planning process. See *CAISO 2022-2023 Transmission Plan, Addendum 1 - Draft (Updated)* (Dec. 11, 2023). The CAISO is merely not conducting a competitive solicitation for the reasons discussed above.

CAISO's participation in the Project. The CAISO does not believe any provision of the CAISO tariff precludes the CAISO from entering into a voluntary agreement such as the Development Agreement. Indeed, the tariff provisions allowing new Participating TOs to join the CAISO after stakeholder input and with approval of the CAISO Board are consistent with such a voluntary agreement approach. However, to the extent the Commission believes that any waivers of the CAISO tariff are necessary to effectuate the Development Agreement, the CAISO requests that the Commission grant such waivers. Good cause exists for granting any necessary tariff waivers for the reasons discussed above.⁴¹

B. Provisions Specific to the SWIP-North Project

The recitals and appendices A and E to the Development Agreement detail the components of the SWIP-North Project and the planned ownership and entitlement rights for the Project, which are described above in this transmittal letter. The total estimated capital cost of the Project is \$1.23 billion, excluding allowance for funds used during construction (AFUDC).⁴² In order to document that Great Basin will prudently manage any potential cost escalations, the CAISO has negotiated provisions in appendix E to the Development Agreement addressing project costs, including a provision for the CAISO to confer with Great Basin should the then-estimated capital cost exceed 10 percent of the updated Project cost estimate.

Appendix E to the Development Agreement includes other provisions that will further reduce uncertainty and mitigate the risks of cost escalation. First, the Development Agreement contains provisions regarding regulatory matters and reporting, including that: cost-related decisions for the SWIP-North Project will be consistent with good utility practice and be subject to prudence review at the Commission pursuant to a Commission-approved formula rate structure; Great Basin will not seek recover construction work in progress in rate base during development or construction of the Project; and if the projected capital cost is 10 percent or more of the Project cost estimate, then (a) Great Basin will provide a written report to the CAISO specifying the reasons for the projected capital cost increase and any additional steps Great Basin plans to take to manage future capital costs, and (b) the CAISO will confer with Great Basin regarding the report and review the projected increase to evaluate if Great Basin's estimate is reasonable.

⁴¹ In the Policy Statement, the Commission stated "[to] the extent that states, public utility transmission providers, or other stakeholders believe that the relevant tariffs impose barriers to Voluntary Agreements, the Commission is open to filings to remove or otherwise address such barriers." Policy Statement at P 2.

⁴² Appendix E to the Development Agreement contains a table showing the estimated cost components that constitute the total estimated capital cost.

In addition, subject to the confidentiality provisions of the Development Agreement, the following provisions in appendix E to the Development Agreement will provide transparency for CAISO stakeholders associated with the construction progress and costs of the SWIP-North Project:

- Great Basin will participate in the Transmission Development Forums that the CAISO holds publicly with stakeholders each quarter in conjunction with the CPUC and the Participating TOs;⁴³
- Great Basin will provide a public-facing executive summary that the CAISO may use at its discretion in any CAISO stakeholder engagement process, which describes the development and construction status of the Project, the planned schedule for its completion, actual capital costs incurred, projected costs at completion, comparison of projected costs to the Project cost estimate, and an estimate of the projected AFUDC at completion;
- Great Basin will participate in meetings at the CAISO's request to discuss the status and cost estimates of the Project; and
- Great Basin acknowledges that data provided to stakeholders may be used by the stakeholders in other processes or proceedings, subject to compliance with confidentiality and critical energy/electric infrastructure information (CEII) procedures.

Appendix E to the Development Agreement states that, regarding land and environmental issues related to construction of the SWIP-North Project, Great Basin will use specified rights-of-way granted by the BLM, private easements, environmental mitigation measures approved by the BLM, and a third-party environmental monitoring team to oversee contractor compliance with environmental and BLM requirements. Furthermore, as to engineering, procurement, and construction, Great Basin already has a contract with an engineer of record for the Project that was also the engineer of record for the ON Line and the DesertLink Line. Great Basin will use structures and conductor similar in design to those used for the ON Line, as approved by the BLM, and has executed transmission line supply agreements for the Project that include fixed prices, subject to certain commodity indices, significant financial security, and schedule liquidated damages.

The Development Agreement also states that Great Basin has executed a transmission line construction agreement for the SWIP-North Project that contains provisions and measures to enable Great Basin to administer that

⁴³ See <https://www.caiso.com/meetings-events/topics/transmission-development-forum>.

agreement so as to ensure a high level of cost containment for the work, including:

- A clear scope of work based on the issued for bid design package and updated with the issued for construction package to minimize potential change orders.
- A fixed lump sum price for the majority of the scope of work, and any items for which cost adjustments are allowed to be clearly identified.
- Financial security for payment and performance of 100 percent of the contract price.
- Liquidated damages for failure to meet key contractual milestones.
- A resource-loaded baseline schedule with agreed-upon construction sequence, durations, and milestones.
- Close monitoring and reporting of progress on constructing the Project, with progress payments made only upon completion of satisfactory progress.
- Establishment of rigorous change control processes to ensure prompt change notification, decision support, prudent approach, and cost agreement.
- Great Basin reserves the unilateral right to change scope to procure major equipment to optimize procurement cost and delivery certainty.⁴⁴

As soon as reasonably practicable, but in any event within 12 months after construction of the SWIP-North Project is completed, Great Basin will provide a summary of the final construction cost, including a written explanation for the use of contingency and any cost overruns in excess of the Project cost estimate.⁴⁵ The various provisions of the Development Agreement described above will reduce uncertainty and mitigate the risks of cost escalation.

The Development Agreement will become effective upon the date it is accepted, approved, or otherwise permitted to take effect by the Commission, without condition or modification unsatisfactory to either the CAISO or Great

⁴⁴ Appendix E to Development Agreement.

⁴⁵ Section 5.6.1 of Development Agreement.

Basin.⁴⁶ The Development Agreement will remain in effect until either of the following events triggers its termination: (1) when CAISO entitlements (as defined in the Development Agreement) are turned over to CAISO operational control, except for the obligations set forth in Sections 5.6, 5.10, and 10.3;⁴⁷ or (2) a party terminates the Development Agreement pursuant to its provisions on default. In either event, no termination will become effective until the parties have satisfied the applicable legal requirements.⁴⁸

C. Other Provisions Based on the *Pro Forma* APSA

The Development Agreement contains provisions that are very similar or identical to provisions in the *pro forma* APSA (except where designated as intentionally not used, *i.e.*, inapplicable) as to regulatory filings and CAISO tariff compliance,⁴⁹ scope of service,⁵⁰ facilities engineering, procurement, and construction,⁵¹ testing and inspection,⁵² metering,⁵³ communications,⁵⁴ regulatory requirements and governing laws,⁵⁵ notices,⁵⁶ force majeure,⁵⁷ default,⁵⁸ indemnity, consequential damages, and insurance,⁵⁹ assignment,⁶⁰ severability,⁶¹

⁴⁶ Section 2.1 of Development Agreement. As discussed below, the CAISO is seeking an effective date for the Development Agreement of November 23, 2024, the day after the date of this filing.

⁴⁷ Section 5.6 requires Great Basin to provide the as-built drawing one hundred twenty days and the final costs within twelve months of the Project energizing; Section 5.10 requires Great Basin to continuously participate in the generator interconnection study process; and Section 10.3 requires Great Basin to refund to the CAISO any TRR ordered by FERC.

⁴⁸ Sections 2.2 and 2.3 of Development Agreement. Article 1 of the Development Agreement contains various defined terms used in the Development Agreement.

⁴⁹ Compare article 3 of Development Agreement with article 3 of *pro forma* APSA.

⁵⁰ Compare article 4 of Development Agreement with article 4 of *pro forma* APSA.

⁵¹ Compare article 5 of Development Agreement with article 5 of *pro forma* APSA.

⁵² Compare article 6 of Development Agreement with article 6 of *pro forma* APSA.

⁵³ Compare article 7 of Development Agreement with article 7 of *pro forma* APSA.

⁵⁴ Compare article 8 of Development Agreement with article 8 of *pro forma* APSA.

⁵⁵ Compare article 11 of Development Agreement with article 11 of *pro forma* APSA.

⁵⁶ Compare article 12 of Development Agreement with article 12 of *pro forma* APSA.

⁵⁷ Compare article 13 of Development Agreement with article 13 of *pro forma* APSA.

⁵⁸ Compare article 14 of Development Agreement with article 14 of *pro forma* APSA.

⁵⁹ Compare article 15 of Development Agreement with article 15 of *pro forma* APSA.

⁶⁰ Compare article 16 of Development Agreement with article 16 of *pro forma* APSA.

⁶¹ Compare article 17 of Development Agreement with article 17 of *pro forma* APSA.

comparability,⁶² confidentiality,⁶³ environmental releases,⁶⁴ information access and audit rights,⁶⁵ subcontractors,⁶⁶ disputes,⁶⁷ representations, warranties, and covenants,⁶⁸ and security arrangement details.⁶⁹

The Development Agreement also contains provisions that are virtually or exactly identical to provisions in the *pro forma* APSA regarding cost recovery, billing, and payment.⁷⁰ In addition, the Development Agreement specifies that the CAISO and CAISO ratepayers will not be responsible for any cost recovery incurred for or related to the Project unless the Commission accepts the Development Agreement as effective.⁷¹ Furthermore, the Development Agreement contains provisions that are virtually or exactly identical to provisions in the *pro forma* APSA regarding miscellaneous matters, e.g., the binding effect of the agreement, rules of interpretation, procedures for making any amendments to the agreement or its appendices in the future, etc.⁷²

III. Effective Date and Request for Waiver of Notice Requirement

The CAISO respectfully requests that the Commission accept the Development Agreement effective November 23, 2024, the day after the date of this filing. To permit this effective date, the CAISO requests waiver of the notice requirement set forth in the Commission's regulations.⁷³ Good cause exists to grant the requested waiver in order to allow the Development Agreement to go into effect as soon as practicable. Granting the requested waiver and permitting the Development Agreement to become effective expeditiously will facilitate state planning portfolios and will allow ratepayers to receive the benefits of the Project identified by the CAISO, as discussed above. Therefore, granting waiver of the notice requirement is appropriate.

⁶² Compare article 18 of Development Agreement with article 18 of *pro forma* APSA.

⁶³ Compare article 19 of Development Agreement with article 19 of *pro forma* APSA.

⁶⁴ Compare article 20 of Development Agreement with article 20 of *pro forma* APSA.

⁶⁵ Compare article 21 of Development Agreement with article 21 of *pro forma* APSA.

⁶⁶ Compare article 22 of Development Agreement with article 22 of *pro forma* APSA.

⁶⁷ Compare article 23 of Development Agreement with article 23 of *pro forma* APSA.

⁶⁸ Compare article 24 of Development Agreement with article 24 of *pro forma* APSA.

⁶⁹ Compare appendix C to Development Agreement with appendix C to *pro forma* APSA.

⁷⁰ Compare article 10 of Development Agreement with article 10 of *pro forma* APSA.

⁷¹ Section 10.1 of Development Agreement.

⁷² Compare article 25 of Development Agreement with article 25 of *pro forma* APSA.

⁷³ Specifically, the CAISO requests waiver, pursuant to Section 35.11 of the Commission's regulations (18 C.F.R. § 35.11), of the 60-day notice requirement set forth in Section 35.3(a)(1) of the Commission's regulations (18 C.F.R. § 35.3(a)(1)).

IV. Attachments

In addition to the instant transmittal letter, this filing includes the following attachments:

| | |
|--------------|--|
| Attachment A | Public – Executed Development Agreement |
| Attachment B | Privileged – Appendix E to Development Agreement |
| Attachment C | Form of Protective Order |

V. Request for Privileged Treatment

The CAISO is submitting both a privileged version and a public version of this filing. Pursuant to 18 C.F.R. Section 388.112, the CAISO respectfully requests privileged treatment for information contained within a table included in Attachment B to this filing relating to specific line item costs that constitute a portion of the total cost of the SWIP-North Project. The CAISO has redacted this information from the public version of this filing. This information is privileged because it reflects sensitive commercial and financial information. The CAISO also submits a form of protective agreement as Attachment B to this filing.

VI. Service

The CAISO has served copies of this filing on Great Basin, DOE, the CPUC, the California Energy Commission, all parties listed in appendix F to the TCA, and all approved project sponsors listed on the CAISO website. In addition, the CAISO has posted the filing on the CAISO website.

VII. Correspondence

In accordance with Rule 203(b)(3) to the Commission's Rules of Practice and Procedure,⁷⁴ the CAISO respectfully requests that all correspondence and other communications regarding this filing should be directed to the following individuals, who should be placed on the official service list for this proceeding:

Sarah E. Kozal
Senior Counsel
Deb Le Vine
Executive Director, Infrastructure Contracts & Management
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7144
Fax: (916) 608-7296
skozal@caiso.com
dlevine@caiso.com

VIII. Conclusion

For the reasons set forth above, the CAISO respectfully requests that the Commission accept the Development Agreement effective one day after the date of this filing, November 23, 2024.

Respectfully submitted,

/s/ Sarah E. Kozal

Roger E. Collanton
General Counsel
Anthony Ivancovich
Deputy General Counsel, Regulatory
Sarah E. Kozal
Senior Counsel

*Attorneys for the California Independent
System Operator Corporation*

⁷⁴ 18 C.F.R. § 385.203(b)(3).

Attachment A – Executed Agreement (Public)
Development Agreement
Between
Great Basin Transmission, LLC regarding SWIP-North Transmission Project
And
California Independent System Operator Corporation
November 22, 2024

PUBLIC VERSION

Privileged Material Redacted

PRIVILEGED INFORMATION

REDACTED PURSUANT TO 18 C.F.R § 388.112

SOUTHWEST INTERTIE PROJECT – NORTH DEVELOPMENT AGREEMENT

BETWEEN

GREAT BASIN TRANSMISSION, LLC

AND

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

TABLE OF CONTENTS

| | |
|--|----|
| ARTICLE 1. DEFINITIONS | 2 |
| ARTICLE 2. EFFECTIVE DATE, TERM, AND TERMINATION..... | 5 |
| ARTICLE 3. REGULATORY FILINGS AND CAISO TARIFF COMPLIANCE | 5 |
| ARTICLE 4. SCOPE OF SERVICE | 6 |
| ARTICLE 5. FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION | 7 |
| ARTICLE 6. TESTING AND INSPECTION..... | 12 |
| ARTICLE 7. METERING | 13 |
| ARTICLE 8. COMMUNICATIONS | 13 |
| ARTICLE 10. COST RECOVERY, BILLING, AND PAYMENT..... | 14 |
| ARTICLE 11. REGULATORY REQUIREMENTS AND GOVERNING LAWS..... | 16 |
| ARTICLE 12. NOTICES | 16 |
| ARTICLE 13. FORCE MAJEURE | 17 |
| ARTICLE 14. DEFAULT | 17 |
| ARTICLE 15. INDEMNITY, CONSEQUENTIAL DAMAGES, AND INSURANCE | 18 |
| ARTICLE 16. ASSIGNMENT | 20 |
| ARTICLE 17. SEVERABILITY | 20 |
| ARTICLE 18. COMPARABILITY..... | 20 |
| ARTICLE 19. CONFIDENTIALITY | 20 |
| ARTICLE 20. ENVIRONMENTAL RELEASES..... | 24 |
| ARTICLE 21. INFORMATION ACCESS AND AUDIT RIGHTS..... | 24 |
| ARTICLE 22. SUBCONTRACTORS..... | 25 |
| ARTICLE 23. DISPUTES..... | 27 |
| ARTICLE 24. REPRESENTATIONS, WARRANTIES, AND COVENANTS | 28 |
| ARTICLE 25. MISCELLANEOUS | 30 |

APPENDICES

Appendix A Project Details

Appendix B Milestones

Appendix C Security Arrangements Details

Appendix D Addresses for Delivery of Notices and Billings

Appendix E Project Sponsor's Costs of Project

SOUTHWEST INTERTIE PROJECT – NORTH DEVELOPMENT AGREEMENT**GREAT BASIN TRANSMISSION, LLC****CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

THIS SOUTHWEST INTERTIE PROJECT – NORTH DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this 8th day of November, 2024, between Great Basin Transmission, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Project Sponsor”), and the California Independent System Operator Corporation, a California nonprofit public benefit corporation organized and existing under the laws of the State of California (“CAISO”). Project Sponsor and the CAISO each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the CAISO exercises Operational Control over the CAISO Controlled Grid; and

WHEREAS, the Project Sponsor owns the rights to the Southwest Intertie Project – North (“Project”) consisting of transmission facilities identified in Appendix A to this Agreement including the associated Transmission Interconnection Facilities and system upgrades; and

WHEREAS, prior to commencement of construction of the Project, the Project Sponsor intends to transfer a 22.831% undivided ownership interest in the Project (the portion of the Project not owned by the Project Sponsor being referred to as the “Excluded Project Interest”) to GBT Northbound, LLC (“GBTN”), which is an Affiliate of Project Sponsor; and

WHEREAS, the Project Sponsor and GBTN intend to finance, construct, and own the Project; and

WHEREAS, GBTN will be responsible for the costs associated with the construction, financing, and ownership of the Excluded Project Interest, and the CAISO is not responsible for payment of such costs; and

WHEREAS, Project Sponsor intends to turn over to CAISO Operational Control the available capacity entitlements it controls on the Project as well as on the One Nevada Transmission Line (“ON Line”), collectively providing to CAISO southbound capacity from Midpoint to Harry Allen and northbound capacity from Harry Allen to Midpoint as further described in Appendix A to this Agreement (“CAISO Entitlements”); and

WHEREAS, the Project and the ON Line will be part of the Balancing Authority Area managed by Nevada Power Company d/b/a NV Energy and/or Sierra Pacific

Power Company d/b/a NV Energy (collectively and separately “NV Energy”); and

WHEREAS, the Project Sponsor will seek interconnection of the Project from NV Energy and Idaho Power Company in accordance with the requirements provided in this Agreement; and

WHEREAS, the Parties agree that the Project Sponsor will enter into the Transmission Control Agreement to become a Participating Transmission Owner (“Participating TO”), if it is not already a Participating TO, effective upon CAISO Operational Control of CAISO Entitlements; and

WHEREAS, the Project Sponsor and the CAISO thus have agreed to enter into this Agreement for the purpose of identifying rights and obligations associated with the Project that arise prior to the effective date of the Project Sponsor’s execution of the Transmission Control Agreement.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

When used in this Agreement, a term with initial capitalization shall have the meaning set forth in this Article 1 or the recitals, or if not defined in this Article 1 or the recitals, shall have the meaning specified in the Article in which it is used or in the CAISO Tariff, Appendix A.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the Western Electricity Coordinating Council or its successor.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the NV Energy Balancing Authority Area, including requirements adopted pursuant to Section 215 of the Federal Power Act.

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

CAISO Entitlements shall have the meaning assigned to such term in Appendix A of this Agreement.

Confidential Information shall mean any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the present or planned business of a Party, subject to Article 19.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 14 of this Agreement.

Effective Date shall mean the date on which this Agreement becomes effective as specified in Article 2.

Environmental Law shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

Excluded Entitlements shall have the meaning assigned to such term in Appendix A of this Agreement.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquake, or explosion, any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, or any other cause beyond the reasonable control of the Parties that could not have been avoided through the exercise of Good Utility Practice. A Force Majeure event does not include (1) acts of negligence or intentional wrongdoing by the Party claiming Force Majeure; (2) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic; (3) economic hardship of either Party; or (4) failure or delay in granting of necessary permits for reasons not caused by Force Majeure.

Governmental Authority shall mean any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Project Sponsor, the CAISO, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants," or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any applicable Environmental Law.

Interconnecting Entities shall mean NV Energy (as defined herein) and Idaho Power Company.

Interconnection Handbook shall mean a handbook, developed by an Interconnecting Entity and posted on the Interconnecting Entity's website or otherwise made available by the Interconnecting Entity, describing technical and operational requirements for controls and protection equipment for transmission connected to the Interconnecting Entity's transmission system, as such handbook may be modified or superseded from time to time. Interconnecting Entity's standards contained in the Interconnection Handbook shall be deemed consistent with Good Utility Practice.

Loss shall mean any and all damages, losses, and claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties.

Major Project Equipment shall mean major project equipment and materials, including associated System Protection Facilities, with a contract value no less than five (5) million dollars.

Metering Equipment shall mean all metering equipment installed or to be installed for measuring the Scheduling Points pursuant to this Agreement at the metering points, including instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NVE Entitlements shall have the meaning assigned to such term in Appendix A of this Agreement.

Party or Parties shall mean the CAISO, the Project Sponsor, or the applicable combination of the above.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

System Protection Facilities shall mean equipment, including necessary protection signal communications equipment, that protect (1) the Interconnecting Entities' transmission systems, Transmission Interconnection Facilities, CAISO Controlled Grid, and Affected Systems from faults or other electrical disturbances and (2) the Project Sponsor's transmission system from faults or other electrical system disturbances occurring on the CAISO Controlled Grid, Interconnecting Entities' transmission systems, Transmission Interconnection Facilities, and Affected Systems or on other delivery systems or other generating systems to which the CAISO Controlled Grid is directly connected.

Transmission Interconnection Facilities shall mean the Interconnecting Entities' transmission facilities, including any modification, additions, or upgrades, that are necessary to physically and electrically interconnect the Project to the Interconnecting Entities' transmission systems.

Transmission Interconnection Service shall mean the service defined in Section 4.2 of this Agreement.

Transmission Use Agreements shall have the meaning assigned to such term in Appendix A of this Agreement.

ARTICLE 2. EFFECTIVE DATE, TERM, AND TERMINATION

2.1 Effective Date. This Agreement shall become effective upon the date the Agreement is accepted, approved or otherwise permitted to take effect by FERC, without condition or modification unsatisfactory to either Party ("Effective Date").

2.1.1 Within ten (10) Business Days after this Agreement is accepted, approved or otherwise permitted to take effect by FERC, either Party may identify any unsatisfactory condition or modification imposed by FERC by written notice to the other Party, and if no such notice is delivered within such ten (10) Business Day period, any conditions or modifications imposed by FERC shall be deemed satisfactory for purposes of this Section 2.1.

2.2 Term of Agreement. This Agreement shall remain in effect until termination consistent with Section 2.3.

2.3 Agreement Termination.

2.3.1 Except for the obligations set forth in Sections 5.6, 5.10, and 10.3, this Agreement shall terminate when CAISO Entitlements have been turned over to CAISO Operational Control.

2.3.2 A Party may terminate this Agreement in accordance with Article 14.

2.3.3 Notwithstanding Sections 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination and, if applicable, FERC has accepted the notice of termination (or such notice of termination has been deemed accepted by operation of law).

ARTICLE 3. REGULATORY FILINGS AND CAISO TARIFF COMPLIANCE

3.1 Filing. The CAISO shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. The Project Sponsor may request that any information included in such filing be subject to the confidentiality provisions of Article 19. If the Project Sponsor has executed this

Agreement, or any amendment to this Agreement, the Project Sponsor shall reasonably cooperate with the CAISO with respect to such filing and to provide any information reasonably requested by the CAISO needed to comply with applicable regulatory requirements.

- 3.2 Agreement Subject to CAISO Tariff.** The Project Sponsor shall comply with all applicable provisions of the CAISO Tariff.
- 3.3 Relationship Between this Agreement and the CAISO Tariff.** If and to the extent a provision of this Agreement is inconsistent with the applicable provisions of the CAISO Tariff and dictates rights and obligations between the CAISO and the Project Sponsor, the applicable provisions of the CAISO Tariff shall govern.
- 3.4 Requirement to Become a Participating TO.** The Project Sponsor agrees that upon completion of sufficient portions of the Project that enable CAISO to use available capacity on the Project and ON Line, Project Sponsor will turn over available capacity to CAISO Operational Control as further described in Appendix A. The Project Sponsor further agrees that it shall enter into the Transmission Control Agreement in sufficient time for its execution to become effective as of the date that CAISO assumes Operational Control of available CAISO Entitlements and that it has met or shall meet all other CAISO Tariff requirements to become a Participating TO in accordance with Section 4.3 of the CAISO Tariff.
- 3.5 Relationship Between this Agreement and the Transmission Control Agreement.** Once the Project Sponsor has entered into the Transmission Control Agreement, if and to the extent a matter specifically addressed in this Agreement is inconsistent with the Transmission Control Agreement, the terms of the Transmission Control Agreement shall govern.

ARTICLE 4. SCOPE OF SERVICE

- 4.1 Transmission Facilities.** The Project Sponsor shall build the Project identified in Appendix A. In addition, the Project Sponsor will turn over CAISO Entitlements to CAISO Operational Control as portions of the CAISO Entitlements become available with the energization of portions of the Project that enable CAISO to use available capacity on the Project and ON Line.
- 4.2 Transmission Interconnection Service.** Transmission Interconnection Service allows the Project Sponsor to connect the Project to the facilities of an Interconnecting Entity. The Project Sponsor shall request Transmission Interconnection Service from the Interconnecting Entities according to the milestones set forth in Appendix B and shall comply with each Interconnecting Entity's transmission interconnection procedures. The Project Sponsor must obtain a separate interconnection agreement for Transmission Interconnection Service from each Interconnecting Entity. Project Sponsor shall use commercially reasonable efforts to cause the interconnection agreement with

each Interconnecting Entity to incorporate the applicable requirements of Sections 4.2.1, 5.3.4, 5.5.3, 5.6.2, 5.10.2, 6.1, 8.1, 9.2, and 9.3 of this Agreement, and to identify the Transmission Interconnection Facilities that the Project Sponsor must pay for in accordance with Section 24.14.2 of the CAISO Tariff, and the associated scope of responsibility between the Project Sponsor and Interconnecting Entity for procuring, constructing, operating and maintaining such Transmission Interconnection Facilities.

4.2.1 Project Sponsor shall use commercially reasonable efforts to cause each interconnection agreement with an Interconnecting Entity to require that such Interconnecting Entity provide to Project Sponsor and the CAISO, every ninety (90) calendar days until the Project is energized and CAISO Entitlements are under CAISO Operational Control, a Transmission Interconnection Facilities status report. Such status report shall include project schedule; permit and license status, including environmental, state, and local permits and licenses; right-of-way acquisition status, if required; land acquisition status, if required; design and engineering status; status of contracts for project work, including land, procurement, and staffing; construction status; testing status; events creating risks and obstacles to project completion; and project budget, including actuals, estimate to complete, and contingency. The format for the report shall be in accordance with the Business Practice Manual for the Transmission Planning Process.

4.3 Project Sponsor to Meet Requirements of Each Interconnecting Entity's Interconnection Handbook. If applicable, the Project Sponsor shall comply with each Interconnecting Entity's Interconnection Handbook for the transmission interconnections.

4.4 Performance Standards. Each Party shall perform all of its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice. To the extent a Party is required to take or prevented from or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its lack of compliance therewith, and if such Party is the CAISO, then the CAISO shall have the authority to amend this Agreement unilaterally to eliminate the conflict with such regulations or standards and shall submit the amendment to FERC for approval, if applicable.

ARTICLE 5. FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION

5.1 General. The Project Sponsor shall, at its expense, design, procure, construct, own, and install the Project, as set forth in Appendix A. The Project Sponsor shall comply with all requirements of law and shall assume responsibility for the design, procurement, and construction of the Project using Good Utility Practice and the standards and specifications provided by the Interconnecting Entities.

The Project shall be based on the assumed accuracy and completeness of all technical information received by the CAISO from the Project Sponsor and by the Project Sponsor from any Interconnecting Entity providing Transmission Interconnection Service. Changes to the Project design described in this Agreement are subject to the requirements of Section 5.9 of this Agreement. Unless otherwise agreed by the Parties, the Project Sponsor shall select the testing date and the energization date for the Project consistent with the dates set forth in Appendix B (Milestones).

5.2 Information Exchange. As soon as reasonably practicable after the Effective Date, the Project Sponsor shall provide information to the CAISO regarding the design and compatibility of the Project and the Transmission Interconnection Facilities, and shall work diligently and in good faith to make any necessary design changes to the Project, subject to approval by the CAISO in accordance with Section 5.9. The Parties shall amend the description of the Project set forth in Appendix A to reflect any agreed changes to the Project.

5.3 Initial Construction Plan and Reporting Requirements. The Project Sponsor shall keep the CAISO advised monthly as to the progress of the financing, procurement, and construction efforts with respect to the Project, via email or verbal discussion as agreed upon by the Parties, and in accordance with the timeframes specified herein.

5.3.1 The Project Sponsor shall provide the CAISO with the initial construction plan ninety (90) calendar days after the CAISO Governing Board Approval of Project Sponsor as a Participating TO. The plan shall include: land acquisition and permits requirements, status, and schedule; materials procurement requirements, status, and schedule; construction financing status and schedule; and Project contact information.

5.3.2 On a quarterly basis, as specified in Appendix B, after the initial construction plan is received until the Project is energized and all CAISO Entitlements are under CAISO Operational Control, the Project Sponsor shall provide the CAISO with a construction plan status report. Such status report shall include the Project schedule; permit and license status, including environmental, state, and local permits and licenses; right-of-way acquisition status; land acquisition status; design and engineering status; events that might affect the ability to meet design specifications; status of contracts for project work, including land, procurement, and staffing; Interconnecting Entity interconnection agreements; construction status; testing status; risks and obstacles to project completion; and Project budget status, including actuals, estimate to complete, and contingency. The report shall also comply with any additional requirements in Appendix E. The format for the report shall be in accordance with the Business Practice Manual for the Transmission Planning Process for Approved Project Sponsors.

5.3.3 [Intentionally not used.]

5.3.4 If, at any time, the Project Sponsor determines, in consultation with the CAISO and any Interconnecting Entity, that the completion of the Transmission Interconnection Facilities will not be required until after the specified energization date set forth in Appendix B (Milestones), the Project Sponsor shall provide written notice to the Interconnecting Entities and to the CAISO of such later date upon which the completion of the Transmission Interconnection Facilities will be required.

5.4 Submission and Review of Project Specifications.

5.4.1 The Project Sponsor shall submit specifications for Major Project Equipment to the CAISO for review and comment at least thirty (30) calendar days prior to the date on which the Project Sponsor intends to enter into a procurement commitment for such Major Project Equipment, or as soon as practical after the Effective Date of this Agreement. The Project Sponsor shall provide the CAISO the opportunity to review such specifications to ensure that the Project is compatible with the technical specifications, Operational Control, safety requirements, and any other applicable requirements of the CAISO, and to provide comment on such specifications within twenty (20) calendar days after the submission. Notwithstanding any comments provided by CAISO, the Major Project Equipment shall comply with all requirements of the interconnection agreements with the Interconnecting Entities and the Transmission Use Agreements. All specifications provided hereunder shall be deemed Confidential Information subject to the provisions of Article 19.

5.4.2 The Project Sponsor shall submit final specifications for Major Project Equipment to the CAISO if the specification materially differs from the specification submitted in accordance with Section 5.4.1. Specifications for review will be provided at least one hundred eighty (180) calendar days prior to the expected energization date pursuant to Appendix B (Milestones). In such case the Project Sponsor shall provide the CAISO the opportunity to review such specifications to ensure that the Project is compatible with the technical specifications, Operational Control, safety requirements, and any other applicable requirements and to provide comments within thirty (30) calendar days after each submission. Notwithstanding any comments provided by CAISO, the Major Project Equipment shall comply with all requirements of the interconnection agreements with the Interconnecting Entities and the Transmission Use Agreements. All specifications provided hereunder shall be deemed Confidential Information subject to the provisions of Article 19.

5.4.3 Final specification review by the CAISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness,

safety, durability, or reliability of the Project or the Transmission Interconnection Facilities. As described in Section 5.4.2, Project Sponsor shall make such changes to the Project as may reasonably be required by the CAISO in accordance with Good Utility Practice, to ensure that the Project is compatible with the technical specifications, Operational Control, and safety requirements of the CAISO. Notwithstanding any comments provided by CAISO, the Major Project Equipment shall comply with the requirements of the interconnection agreements with the Interconnecting Entities and the Transmission Use Agreements.

5.5 Construction Activities.

5.5.1 The Project Sponsor shall commence construction of the Project as soon as practicable, consistent with the schedule set forth in Appendix B (Milestones), after the following additional conditions are satisfied:

5.5.1.1 The Project Sponsor has obtained appropriate Governmental Authority approval for any facilities requiring regulatory approval.

5.5.1.2 The Project Sponsor has obtained necessary permits, real property rights, and rights-of-way, to the extent required for the construction of the applicable portions of the Project.

5.5.2 At least thirty (30) calendar days prior to commencement of Project construction, the Project Sponsor shall provide to the CAISO, for informational purposes, a construction schedule for the Transmission Interconnection Facilities.

5.5.3 At any time during construction, should any phase of the Project engineering, equipment procurement, or construction not meet the standards and specifications provided by the Interconnecting Entities, the Project Sponsor shall be obligated to remedy deficiencies in that portion of the Project. The Project Sponsor may seek approval from FERC to recover in its transmission revenue requirement just and reasonable costs associated with such remedy.

5.5.4 The Project Sponsor shall indemnify the CAISO for claims arising under this Agreement resulting from Project construction under the terms and procedures specified in Section 15.1 Indemnity, other than for losses arising from actions that are not within the control of the Project Sponsor.

5.5.5 [Intentionally not used.]

5.6 Final Project Design

5.6.1 As soon as reasonably practicable, but within twelve months after Project construction completion, the Project Sponsor shall provide a summary of

the final construction cost, which summary shall set forth sufficient detail to enable the CAISO to understand the Project costs, including a written explanation for the use of contingency and any cost overruns in excess of the cost estimate provided in Appendix E.

5.6.2 The Project shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) calendar days after CAISO Entitlements have been turned over to the CAISO's Operational Control, unless the CAISO and Project Sponsor agree on another mutually acceptable date, the Project Sponsor shall deliver to the Interconnecting Entities and to the CAISO "as-built" drawings, information, and documents for the Project. This information shall include, as applicable: (i) a one-line diagram; (ii) a site plan drawing showing the Project, including plan and elevation drawings showing the layout of the Transmission Interconnection Facilities; (iii) a relay functional diagram, relaying AC and DC schematic wiring diagrams, and relay settings for all facilities associated with the Project; and (iv) the impedances, determined by factory tests, for the associated transformers. The Project Sponsor shall provide the CAISO specifications for the protection settings, transformer tap settings, and communications, if applicable. The CAISO shall assess any deviations from the relay settings, machine specifications, and other specifications originally submitted by the Project Sponsor pursuant to the appropriate provisions of this Agreement.

5.6.3 The obligations under this Section 5.6, including Sections 5.6.1, 5.6.2, and 5.6.3, shall survive termination of this Agreement.

5.7 [Intentionally not used.]

5.8 [Intentionally not used.]

5.9 **Modification.**

5.9.1 Except to the extent required by any Governmental Authority, the Project Sponsor shall not undertake modifications to its facilities that will reduce the CAISO Entitlements without the approval of the CAISO and subject to the provisions of this Agreement and the CAISO Tariff. If the Project Sponsor plans to undertake such a modification, it shall provide such information regarding such modification to the CAISO as the CAISO deems necessary to evaluate the potential impact of such modification prior to commencement of the work. Such information shall include information concerning the timing of such modification, any technical information, and cost impact. The Project Sponsor shall provide the relevant drawings, plans, and specifications to the CAISO at least ninety (90) calendar days in advance of the commencement of the work or within such shorter period upon which the Parties may agree, which agreement

shall not unreasonably be withheld, conditioned, or delayed. The CAISO shall determine if a modification is in accordance with the original Project criteria and intent and whether to approve the modification within thirty (30) calendar days after the Project Sponsor's submission.

5.9.2 Any additions, modifications, or replacements made to the Project's facilities shall be designed, constructed, and operated in accordance with this Agreement, Applicable Laws and Regulations, and Good Utility Practice.

5.9.3 Any modifications to the Project's facilities ordered by a siting agency are not subject to CAISO approval. However, the Project Sponsor is required to notify the CAISO within thirty (30) calendar days after the siting agency has issued an order directing Project modifications.

5.10 Generator Interconnection Study Process.

5.10.1 [Intentionally not used.]

5.10.2 Any requests for generation or transmission interconnection to the Project submitted to the Project Sponsor following the Effective Date of this Agreement shall require the Project Sponsor to notify the CAISO. Generator interconnection requests to the Project or ON Line shall be processed in accordance with the Transmission Use Agreements and, to the extent consistent therewith, the CAISO as an Affected System process set forth in the CAISO Tariff.

5.10.3 [Intentionally not used.]

5.10.4 The obligations under this Section 5.10, including Sections 5.10.2 and 5.10.4, shall survive termination of this Agreement.

5.11 [Intentionally not used.]

5.12 Tax Status. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the CAISO's or the Project Sponsor's tax exempt status with respect to the issuance of bonds, including Local Furnishing Bonds, if any.

ARTICLE 6. TESTING AND INSPECTION

6.1 Testing and Modifications. Prior to energizing the Project for testing, the Interconnecting Entities shall test the Transmission Interconnection Facilities, and the Project Sponsor shall test the Project to ensure their safe and reliable operation. All testing shall be coordinated and approved by the CAISO to ensure grid reliability. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a

result of such testing. The Project Sponsor shall not commence initial parallel operation of the Project until the Interconnecting Entities provide prior written approval to the CAISO and the Project Sponsor.

6.2 Right to Observe Testing. The Project Sponsor shall notify the CAISO at least fourteen (14) calendar days in advance of its performance of tests. The CAISO has the right, at its own expense, to observe such testing.

6.3 Right to Inspect. The CAISO shall have the right, but shall have no obligation, to (i) observe the Project Sponsor's tests and/or inspection of any of its System Protection Facilities and other protective equipment; and (ii) review the settings of the Project Sponsor's System Protection Facilities and other protective equipment at its expense. The CAISO may exercise these rights from time to time as it deems necessary upon reasonable notice to the Project Sponsor. The exercise or non-exercise by CAISO of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Project or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that CAISO obtains through the exercise of any of its rights under this Section 6.3 shall be deemed to be Confidential Information and treated pursuant to Article 19 of this Agreement.

ARTICLE 7. METERING

7.1 General. The Project Sponsor shall comply with any Applicable Reliability Standards and the Applicable Reliability Council requirements regarding metering. The Project Sponsor and CAISO shall comply with the provisions of the CAISO Tariff regarding metering, including Section 10 of the CAISO Tariff. Power flows to and from the Project (excluding the NVE Entitlements and the Excluded Entitlements, as defined in Appendix A of this Agreement) shall be measured at or, at the CAISO's option for its respective Metering Equipment, compensated to, the Scheduling Points. The CAISO shall provide metering quantities to the Project Sponsor upon request in accordance with the CAISO Tariff by directly polling the CAISO's meter data acquisition system. The Project Sponsor shall bear all reasonable documented costs associated with the purchase, installation, operation, testing, and maintenance of the Metering Equipment.

ARTICLE 8. COMMUNICATIONS

8.1 Project Sponsor Obligations. The Project Sponsor shall maintain satisfactory operating communications with the CAISO in accordance with the provisions of the CAISO Tariff and with each Interconnecting Entity's dispatcher or such other representative(s) designated by the Interconnecting Entities during synchronization, testing, and energization. The Project Sponsor shall provide standard voice line, dedicated voice line, and facsimile communications at the

Project's control room or central dispatch facility through use of either the public telephone system or a voice communications system that does not rely on the public telephone system. The Project Sponsor shall also provide the dedicated data circuits necessary to provide Project Sponsor data to the CAISO and Interconnecting Entities as set forth in Appendix C, Security Arrangements Details. The data circuits shall extend from the Project to the locations specified by the CAISO and Interconnecting Entities. Any required maintenance of such communications equipment shall be performed by the Project Sponsor. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, and equipment clearances.

ARTICLE 9. OPERATIONS

- 9.1 General.** Each Party shall comply with Applicable Reliability Standards and the Applicable Reliability Council operating requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.
- 9.2 CAISO Obligations.** The CAISO shall cause the CAISO Controlled Grid to be operated and controlled in a safe and reliable manner during testing and synchronization and before the Project Sponsor turns CAISO Entitlements over to CAISO Operational Control. The CAISO may provide operating instructions to the Project Sponsor consistent with this Agreement and the Interconnecting Entities' and CAISO's operating protocols and procedures as they may change from time to time. The Interconnecting Entities and CAISO will consider changes to their operating protocols and procedures proposed by the Project Sponsor.
- 9.3 Project Sponsor Obligations.** The Project Sponsor shall at its own expense operate, maintain, and control the Project in a safe and reliable manner and in accordance with this Agreement in advance of turning CAISO Entitlements over to CAISO Operational Control. The Project Sponsor shall not energize the Project with an Interconnecting Entity's transmission system until the Interconnecting Entity provides prior written approval.
- 9.4 Start-Up and Synchronization.** The Parties shall establish agreed procedures for start-up, testing, and energization of the Project prior to start-up of the Project. The Project Sponsor shall be responsible for proper start-up and energization of the Project in compliance with the established procedures.

ARTICLE 10. COST RECOVERY, BILLING, AND PAYMENT

- 10.1 Transmission Revenue Requirement.** The CAISO and CAISO ratepayers will not be responsible for any cost recovery for costs incurred for or related to the Project unless FERC accepts this Agreement as effective. Cost recovery for the

Project Sponsor shall be pursuant to a Transmission Revenue Requirement and TO Tariff accepted by FERC. If FERC accepts such Transmission Revenue Requirement, the CAISO shall incorporate the Transmission Revenue Requirement into the Regional Access Charge in accordance with the CAISO Tariff and cost recovery shall begin once the available CAISO Entitlements are placed under CAISO Operational Control. The Project Sponsor acknowledges and agrees with the cost estimates and the binding cost containment measures set forth in Appendix E.

- 10.2 Application of CAISO Tariff.** The CAISO and Project Sponsor shall comply with the billing and payment provisions set forth in the CAISO Tariff.
- 10.3 Refund Obligation.** The Project Sponsor, whether or not it is subject to FERC rate jurisdiction under Section 205 and Section 206 of the Federal Power Act, shall make all refunds, adjustments to its Transmission Revenue Requirement, and adjustments to its TO Tariff, and do all other things required to implement any FERC order related to the CAISO Tariff, including any FERC order the implementation of which necessitates the CAISO making payment adjustments or paying refunds to, or receiving prior period overpayments from, the Project Sponsor. All such refunds and adjustments shall be made, and all other actions taken, in accordance with the CAISO Tariff, unless the applicable FERC order requires otherwise. These obligations under this Section 10.3 shall survive termination of this Agreement.

ARTICLE 11. REGULATORY REQUIREMENTS AND GOVERNING LAWS

11.1 Regulatory Requirements. Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, and compliance with the prior notice requirements of such Governmental Authorities. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require the Project Sponsor to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978, or the Energy Policy Act of 2005.

11.2 Governing Law.

11.2.1 The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of California, without regard to its conflicts of law principles.

11.2.2 This Agreement is subject to all Applicable Laws and Regulations.

11.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 12. NOTICES

12.1 General. Unless otherwise provided in this Agreement, any notice, demand, or request required or permitted to be given by a Party to another and any instrument required or permitted to be tendered or delivered by a Party in writing to another shall be effective when delivered and may be so given, tendered, or delivered by (i) recognized national courier, (ii) depositing the same with the United States Postal Service with postage prepaid for delivery by certified or registered mail, addressed to the Party, or (iii) personal delivery to the Party, at the address set out in Appendix D, Addresses for Delivery of Notices and Billings.

A Party must update the information in Appendix D as information changes. A Party may change the notice information in this Agreement by giving five Business Days written notice prior to the effective date of the change. Such changes shall not constitute an amendment to this Agreement.

12.2 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to another and not required by this Agreement to be given in writing may be given by telephone or e-mail to the telephone numbers and e-mail

addresses set out in Appendix D.

12.3 [Intentionally not used.]

12.4 Operations Notice. Each Party shall notify the other Party in writing of the identity of the person that it designates as the point of contact with respect to the implementation of Article 9.

12.5 [Intentionally not used.]

12.6 Notice of Regulatory Filings. The Project Sponsor will provide to the CAISO, Participating TOs (as listed on Appendix F to the Transmission Control Agreement), and Approved Project Sponsors, a copy of all initial filings it submits in a FERC docket that affect the rates (including Transmission Revenue Requirement), terms, or conditions of service for the Project. The Project Sponsor will provide such copy either via email or first-class U.S. mail on the same day it makes the filing with FERC; provided that if the copy is sent via U.S. mail, the requirement will be satisfied if the Project Sponsor places the copy in the mail on the date of filing. The CAISO will post the contact information for the Participating TOs, Approved Project Sponsors and Project Sponsors on the CAISO website.

ARTICLE 13. FORCE MAJEURE

13.1 Force Majeure.

13.1.1 No Party shall be considered to be in Default with respect to any obligation hereunder if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred, and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

13.1.2 If required, the Parties shall revise this Agreement, including Appendix B and Appendix E, following a Force Majeure event.

ARTICLE 14. DEFAULT

14.1. General. No Default shall exist where failure to discharge an obligation, other than the payment of money, is the result of Force Majeure as defined in this

Agreement or the result of an act or omission of the other Party. Upon a Breach, the affected non-Breaching Party shall give written notice of such Breach to the Breaching Party. The Breaching Party shall have thirty (30) calendar days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) calendar days, the Breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

- 14.2 Right to Terminate.** If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the affected non-Breaching Party shall have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs and be relieved of any further obligation hereunder and, whether or not such Party terminates this Agreement, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article shall survive termination of this Agreement.
- 14.3 Notice to Financing Parties.** If, as contemplated by Section 16.1, the Project Sponsor has provided notice to the CAISO of an assignment of this Agreement for collateral security purposes to aid in providing financing for the Project, then (a) if such notice of collateral assignment so indicates and contains notice information for the collateral assignee, the CAISO shall provide a copy to collateral assignee identified in such notice of any notice of Breach given by the CAISO to the Project Sponsor and (b) such collateral assignee shall have the right, but no obligation, to effect cure of the Breach on behalf of the Project Sponsor, and any performance of any obligations under this Agreement by such collateral assignee shall be accepted by the CAISO to the same extent as though the Project Sponsor had directly performed such obligations.

ARTICLE 15. INDEMNITY, CONSEQUENTIAL DAMAGES, AND INSURANCE

- 15.1 Indemnity.** Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Party (the “Indemnified Party”) harmless from any and all Losses arising out of or resulting from the Indemnifying Party's action or inactions of its obligations under this Agreement, except in cases of negligence or intentional wrongdoing by the Indemnified Party.

15.1.1 Indemnified Party. If the Indemnified Party is entitled to indemnification under this Article 15 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 15.1 to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle, or consent to the entry of any judgment with respect to, or pay in full, such claim.

15.1.2 Indemnifying Party. If the Indemnifying Party is obligated to indemnify and hold the Indemnified Party harmless under this Article 15, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

15.1.3 Indemnity Procedures. Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 15.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include the Indemnified Party and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit, or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit, or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit, or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in which event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit, or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned, or delayed.

15.2 Consequential Damages. In no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including loss of profit or revenue, loss of the use of equipment, cost of capital, or cost of temporary equipment or services, whether based in whole or in part in contract or

in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement shall not be considered to be special, indirect, incidental, or consequential damages hereunder.

- 15.3 Insurance.** The Project Sponsor shall carry insurance for the Project in accordance with Good Utility Practice.

ARTICLE 16. ASSIGNMENT

- 16.1 Assignment.** With the exception of assignment for collateral security purposes in accordance with this Section and Section 14.3, this Agreement may be assigned by a Party only with the written consent of the other Party, which consent shall not be unreasonably withheld. The CAISO will not approve the assignment unless the assignee (i) agrees to honor the cost containment measures specified in Appendix E; and (ii) assumes the rights and obligations contained in this Agreement; provided, however, that the Project Sponsor shall have the right to assign this Agreement, without the consent of the CAISO, for collateral security purposes to aid in providing financing for the Project, provided that the Project Sponsor shall promptly notify the CAISO of any such assignment, including identification of the assignee and contact information. CAISO shall cooperate with any assignment for collateral security by reasonably responding to reasonable requests for estoppel certificates, consents, and acknowledgements. Any financing arrangement entered into by the Project Sponsor pursuant to this Article shall provide that prior to or upon the exercise of the secured party's, trustee's, or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee, or mortgagee shall notify the CAISO of the date and particulars of any such exercise of assignment rights. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

ARTICLE 17. SEVERABILITY

- 17.1 Severability.** If any provision in this Agreement is finally determined to be invalid, void, or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Agreement.

ARTICLE 18. COMPARABILITY

- 18.1 Comparability.** The Parties shall comply with all applicable comparability and code of conduct laws, rules, and regulations, as amended from time to time.

ARTICLE 19. CONFIDENTIALITY

19.1 Confidentiality. Confidential Information shall include all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to the other Party pursuant to or prior to the execution of this Agreement.

If requested by a Party, the other Party shall provide in writing the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

19.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article, each Party shall hold in confidence and shall not disclose Confidential Information to any person.

19.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Section 19.1.7 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

19.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, Affiliates (limited by the Standards of Conduct requirements set forth in Part 358 of FERC's regulations, 18 C.F.R. Section 358), and subcontractors, or to parties who may be or considering providing financing to or equity participation with the Project Sponsor, or to potential purchasers or assignees of the Project Sponsor, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party

providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article.

19.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by a Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

19.1.5 No Warranties. The mere fact that a Party has provided Confidential Information does not constitute a warranty or representation as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Party or to enter into any further agreements or proceed with any other relationship or joint venture.

19.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

19.1.7 Order of Disclosure. If a court or another Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request or requirement so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

19.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) calendar days after receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete, with such destruction, erasure, and deletion certified in writing to the other Party, or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party, unless subject to retention for litigation or regulatory purposes.

19.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article.

19.1.10 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article to the contrary, and pursuant to 18 C.F.R. Section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. Section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. A Party is prohibited from notifying the other Party prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. Section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

19.1.11 Subject to the Exception in Section 19.1.10. Subject to the exception in Section 19.1.10 and consistent with the provisions of Sections 19.1.3 and 19.1.7, Confidential Information shall not be disclosed by a Party to any person not employed or retained by that Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Balancing Authority

including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of another Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this Section 19.1.11, the disclosing Party shall promptly notify the other Party in writing and shall assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order, or other reasonable measures.

ARTICLE 20. ENVIRONMENTAL RELEASES

- 20.1** Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, including hazardous wastes as defined by local, state, and federal law, any asbestos or lead abatement activities, or any type of remediation activities related to the Project or the Transmission Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, for an occurrence that may present an immediate risk to human health or the environment; (ii) make a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence for an event that may present an immediate risk to human health or the environment; and (iii) promptly furnish to the other Party information necessary for the designated Party to notify any Governmental Authorities of the event as required by law or Project-specific conditions. Copies of any publicly available reports shall be distributed to the other Party regarding such events.

ARTICLE 21. INFORMATION ACCESS AND AUDIT RIGHTS

- 21.1 Information Access.** Each Party (the “disclosing Party”) shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Section 21.1 and to enforce their rights under this Agreement. Nothing in this Article shall obligate the CAISO to make available to a Party any third party information in its possession or control if making such third party information available would violate a CAISO Tariff restriction on the use or disclosure of such third party information.
- 21.2 Reporting of Non-Force Majeure Events.** Each Party (the “notifying Party”) shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide

necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation, or information provided under this Section shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

21.3 Audit Rights. Subject to the requirements of confidentiality under Article 19 of this Agreement, the CAISO audit rights shall include the CAISO's right to audit the Project Sponsor's costs pertaining to performance or satisfaction of obligations under this Agreement.

21.3.1 The CAISO shall have the right, during normal business hours, and upon prior reasonable notice to the Project Sponsor, to audit at its own expense the accounts and records pertaining to satisfaction of obligations under this Agreement. Subject to Section 21.3.2, any audit authorized by this Section 21.3 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to performance and satisfaction of obligations under this Agreement. The Project Sponsor shall keep such accounts and records for a period equivalent to the audit rights periods described in Section 21.4.

21.3.2 Notwithstanding anything to the contrary in this Agreement, the Project Sponsor's rights to audit the CAISO's accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff.

21.4 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Project constructed by the Project Sponsor shall be subject to audit and verification by the CAISO for a period of twenty-four months following the issuance of a final cost summary in accordance with Section 5.6.1.

ARTICLE 22. SUBCONTRACTORS

22.1 General. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

22.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made;



provided, however, that in no event shall the CAISO be liable for the actions or inactions of the Project Sponsor or its subcontractors with respect to obligations of the Project Sponsor under Article 4 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

ARTICLE 23. DISPUTES

- 23.1 General.** All disputes arising out of or in connection with this Agreement whereby relief is sought by or from the CAISO shall be settled in accordance with the provisions of Section 13 of the CAISO Tariff, except that references to the CAISO Tariff in such Section 13 of the CAISO Tariff shall be read as references to this Agreement. Disputes arising out of or in connection with this Agreement not subject to provisions of Section 13 of the CAISO Tariff shall be resolved as follows:
- 23.2 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the “disputing Party”) shall provide the other Party with written notice of the dispute or claim (“Notice of Dispute”). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) calendar days after the other Party’s receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.
- 23.3 External Arbitration Procedures.** Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) calendar days after the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) calendar days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration, except prior arbitration. The arbitrator shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article, the terms of this Article shall prevail.
- 23.4 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) calendar days after appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this

Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with, and approved by, FERC if it affects jurisdictional rates, terms, and conditions of service, Transmission Interconnection Facilities, or Network Upgrades.

- 23.5 Costs.** Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

ARTICLE 24. REPRESENTATIONS, WARRANTIES, AND COVENANTS

- 24.1 General.** Each Party makes the following representations, warranties, and covenants:

24.1.1 Good Standing. Such Party is duly organized, validly existing, and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Project and transmission facilities owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

24.1.2 Authority. Such Party has the right, power, and authority to enter into this Agreement, to become a Party hereto, and to perform its obligations hereunder. This Agreement is a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally and by general equitable principles, regardless of whether enforceability is sought in a proceeding in equity or at law.

24.1.3 No Conflict. The execution, delivery, and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement, or instrument applicable to or binding upon such Party or any of its assets.

24.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this Agreement, will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery, and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

24.1.5 Technical Specifications Accurate. The technical specifications provided by the Project Sponsor to the CAISO are accurate and complete.

ARTICLE 25. MISCELLANEOUS

- 25.1 Binding Effect.** This Agreement and the rights and obligations hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 25.2 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendices, or exhibits hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed the final intent of the Parties.
- 25.3 Rules of Interpretation.** This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement, including this Agreement, document, instrument, or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section, or Appendix means such Article or Section of this Agreement or such Appendix to this Agreement, or such Section of the CAISO Tariff or such Appendix to the CAISO Tariff, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section, or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

- 25.4 Entire Agreement.** This Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, any Party's compliance with its obligations under this Agreement.
- 25.5 No Third Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest, and, where permitted, their assigns.
- 25.6 Waiver.** The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.
- Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or Default of this Agreement for any reason by the Project Sponsor shall not constitute a waiver of the Project Sponsor's legal rights to obtain an interconnection from the CAISO. Any waiver of any provision of this Agreement shall, if requested, be provided in writing.
- 25.7 Headings.** The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.
- 25.8 Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original but all of which constitute one and the same instrument.
- 25.9 Amendment.** The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 25.10 Modification by the Parties.** Except as described in Appendices B and E, the Parties may by mutual agreement amend the Appendices to this Agreement by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

25.11 Reservation of Rights. The CAISO has the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder with respect to any rates, terms and conditions, charges, classifications of service, rule, or regulation. The Project Sponsor shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations. Each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered.

25.12 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

25.13 Joint and Several Obligations. Except as otherwise provided in this Agreement, the obligations of the CAISO and the Project Sponsor are several, and are neither joint nor joint and several.



IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original effective agreement between the Parties.

Great Basin Transmission, LLC

Signed by:
By: Mark D. Milburn
BC0AD836D9294A3...
Name: Mark D. Milburn
Title: Senior Vice President, Project Development
Date: 11/9/2024

California Independent System Operator Corporation

Signed by:
By: Neil Millar
9236FA183EA64FB...
Name: Neil Millar
Title: Vice President, Infrastructure and Operations Planning
Date: 11/8/2024

Appendices to Agreement

Appendix A Project Details

Appendix B Milestones

Appendix C Security Arrangements Details

Appendix D Addresses for Delivery of Notices and Billings

Appendix E Project Sponsor's Costs of Project

Appendix A

Project Details

1. Description

The Project (sometimes referred to herein as “SWIP-North”) is a planned 285-mile 500 kilovolt (“kV”) transmission line between the existing Robinson Summit Substation in the Ely, Nevada area and the existing Midpoint Substation in the Twin Falls, Idaho area (see diagram below). SWIP-North will connect to the ON Line at the Robinson Summit Substation. The ON Line is an existing 231-mile 500 kV transmission line between Robinson Summit Substation and Harry Allen Substation that interconnects with the CAISO Balancing Authority Area (BAA) at the Harry Allen Substation and was placed into service in January 2014. The ON Line (a) is jointly owned by (i) NV Energy, and (ii) Great Basin Transmission South, LLC (“GBTS”), which is an Affiliate of Project Sponsor and (b) was constructed and is currently owned, maintained and operated pursuant to the terms and conditions of the Second Amended and Restated Transmission Use and Capacity Exchange Agreement dated as of June 30, 2020 among NV Energy, GBTS and Project Sponsor (as amended or supplemented from time to time, the “TUA”).

After SWIP-North is completed, there will be an approximately 2,000 megawatt (“MW”) firm bidirectional transmission pathway between the existing CAISO BAA in southern Nevada and the Idaho Power Company/PacifiCorp Midpoint Substation in southern Idaho. Both SWIP-North and the ON Line will reside in the NV Energy BAA.

At the commencement of construction of the Project, SWIP-North will be jointly owned by the Project Sponsor (as to a 77.169% undivided ownership interest) and GBTN (as to the Excluded Project Interest).

Pursuant to the TUA, upon the completion of SWIP-North, certain capacity entitlements covering both SWIP-North and the existing ON Line will come into being, comprised of (i) the CAISO Entitlements, as described in more detail below, (ii) capacity entitlements held by NV Energy, as described in more detail below (the “NVE Entitlements”), and (iii) capacity entitlements held by GBTN (and/or one or more third parties that acquire some or all of such capacity entitlements from GBTN), as described in more detail below (the “Excluded Entitlements” and, together with the CAISO Entitlements and the NVE Entitlements, the “Entitlements”).

The Entitlements will exist pursuant to and be subject to the terms and conditions of the TUA and any other similar agreements entered into among the co-owners of the Project (collectively, the “Transmission Use Agreements”).

Capacity Entitlements

Pursuant to Section 3.4 of this Agreement, upon completion of sufficient portions of the Project that enable CAISO to use available capacity on the Project and ON Line, Project Sponsor will turn the available CAISO Entitlements, which represent all of Project Sponsor’s available capacity on SWIP-North and the ON Line pursuant to the Transmission Use Agreements, over to CAISO Operational Control.

The table below describes how the available southbound (i.e., Midpoint Substation to Harry Allen Substation) capacity and northbound (i.e., Harry Allen Substation to Midpoint Substation) capacity, in each case measured in number of MWs, on SWIP-North and the ON Line will be allocated among the CAISO Entitlements, the NVE Entitlements and the Excluded Entitlements pursuant to the Transmission Use Agreements:

| | NVE Entitlements | CAISO Entitlements | Excluded Entitlements |
|------------------------|---------------------|-----------------------|--------------------------|
| Southbound, SWIP-North | 952.5 MW | 1,117.5 MW | 0 MW |
| Southbound, ON Line | 1,217.5 MW | 1,117.5 MW | 0 MW |
| Northbound, SWIP-North | 847.5 MW | 572.5 MW | 500 MW |
| Northbound, ON Line | 1,172.5 MW | 572.5 MW | 500 MW |

The “Entitlement” amounts shown in the table above (a) are based on the current Western Electricity Coordinating Council (“WECC”) protected Phase 3 Path Ratings for SWIP-North and the ON Line (the “WECC Ratings”) as allocated in accordance with the Transmission Use Agreements and (b) as such, refer to the maximum amount of transmission capacity that the holders of the Entitlements will be entitled to utilize (based on the applicable WECC Ratings), with the understanding that the actual amount of transmission capacity available for use at any given time will depend on the amount of capacity that is physically available based on the then-existing operating conditions.

In the event the WECC Ratings change in the future, the amounts shown in the table above will be subject to change pursuant to the Transmission Use Agreements, but the amounts allocated to the CAISO Entitlements (as measured in number of MWs) will not be decreased except in the case of a reduction in the WECC Ratings (in which case the maximum amounts shown in the table above will be reduced as required by the Transmission Use Agreements).

Cost Allocation

Project Sponsor’s cost recovery of Project-related costs will be in accordance with Article 10 and Appendix E of this Agreement. CAISO’s cost responsibility for the Project Sponsor’s costs under this Agreement upon CAISO Operational Control of

CAISO Entitlements is limited to the costs associated with the CAISO Entitlements and Project Sponsor's partial ownership interest in the Project (which, based on the current WECC Ratings, is a 77.169% undivided ownership interest in SWIP-North), which excludes any costs associated with the (a) the Excluded Project Interest and (b) the existing ON Line facilities. Project Sponsor agrees to the provisions of Appendix E to this Agreement to reduce cost uncertainty and mitigate the risks of cost escalation.

Transmission Control Agreement

The future Transmission Control Agreement amendment intended to include the Project Sponsor as a PTO, in accordance with Article 3 herein, shall affirm that the Project Sponsor shall be entitled and obligated to recover the just and reasonable costs of developing, financing, constructing, operating, upgrading, improving and maintaining Project Sponsor's portion of the Project through Project Sponsor's Transmission Revenue Requirement as established from time to time by FERC, to the extent that CAISO Entitlements are placed under CAISO Operational Control, and subject to the cost allocation principles herein.

Subject to the Transmission Use Agreements, and any other implementation or operations agreements that may be required among CAISO, Project Sponsor and NV Energy, CAISO's Operational Control with respect to the CAISO Entitlements shall operate as follows: (1) the CAISO Entitlements shall be in the NV Energy Balancing Authority Area; (2) CAISO shall have the ability to schedule the deliverability of capacity and energy over the CAISO Entitlements consistent with the CAISO Tariff; (3) NV Energy as the Transmission Operator of SWIP-North and ON Line shall coordinate all planned outages of the CAISO Entitlements with CAISO; and (4) NV Energy will notify the CAISO of any forced outages of the Entitlements, as soon as practical.

Any requested generator interconnections to SWIP-North or ON Line will be studied as determined pursuant to the Transmission Use Agreements or other agreements to which Project Sponsor is a party, and in accordance with Section 5.10.2 of this Agreement.

Project Scope

SWIP-North will include the following facilities:

- a) 500 kV Transmission Line – A single circuit, above-ground 500 kV alternating current transmission line that extends approximately 285 miles from the Robinson Summit Substation in White Pine County, Nevada to the Midpoint Substation in Jerome County, Idaho, forming the “Midpoint to Robinson Summit 500 kV Line”. The transmission line will be constructed on approximately 227 miles of BLM rights-of-way and approximately 58 miles of private easements.

The transmission line will be configured with triple-bundle ACSR “Lapwing” conductors and will be protected from lightning with two overhead shield wires one of which will be an optical ground wire. The primary structure design will be a horizontal configuration, tubular guyed-v with a weathering steel finish. The transmission line will require a redundant and diverse secondary communications path which may be in the form of fiber or microwave.

- b) Midpoint Substation Expansion - The Midpoint Substation in Jerome County, Idaho will be expanded to include additional system upgrade facilities to accommodate the interconnection and operation of the Midpoint to Robinson Summit 500 kV Line. Final details of the configuration will be defined in an interconnection agreement between Project Sponsor and Idaho Power Company. Based on the Idaho Power Company studies performed to date, it is currently expected that the following equipment will be included at a minimum:
- i) Transmission Interconnection Facilities as further described below;
 - ii) one (1) 500 kV fixed series capacitor bank installed on the Midpoint to Robinson Summit 500 kV Line for 70% compensation on SWIP-North;
 - iii) two (2) 500 kV shunt reactors;
 - iv) all necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., enclosures, trenches, cables, fencing, walls, etc.).
- c) Robinson Summit Substation Expansion - The Robinson Summit Substation in White Pine County, Nevada will be expanded to include additional system upgrade facilities to accommodate the interconnection and operation of the Midpoint to Robinson Summit 500 kV Line. Final details of the configuration will be defined in an interconnection agreement between Project Sponsor and NV Energy. Based on the NV Energy studies performed to date, it is currently expected that the following equipment will be included at a minimum:
- i) Transmission Interconnection Facilities as further described below;
 - ii) two (2) 500 kV fixed series capacitor banks, one installed on the Midpoint to Robinson Summit 500 kV Line for 70% compensation on SWIP-North and one installed on the Robinson Summit to Harry Allen 500 kV Line for 70% compensation on ON Line;
 - iii) two (2) 500 kV shunt reactors;
 - iv) three (3) 500 kV shunt capacitor banks;
 - v) two (2) 345 kV phase shifting transformers;
 - vi) one (1) 345 kV shunt capacitor bank;
 - vii) all necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., enclosures, trenches, cables, fencing, walls, etc.).

- d) **Burnt Springs Fixed Series Capacitor (“FSC”) Site** – A new Burnt Springs FSC Site will be constructed in Lincoln County, Nevada to include one (1) 500 kV fixed series capacitor bank installed as a system upgrade to the Robinson Summit to Harry Allen 500 kV Line for 70% compensation of ON Line. Final details of the configuration will be defined in the Robinson Summit interconnection agreement between Project Sponsor and NV Energy. Based on the studies performed to date, it is currently expected that the installation may include reconfiguration of certain ON Line facilities to loop in the Burnt Springs FSC site as well as all necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., distribution service, backup power supply, enclosures, trenches, cables, fencing, walls, etc.). The site may also double as a fiber regeneration site for ON Line and may include a new tower for microwave communications.
- e) **Harry Allen Substation Expansion** - The Harry Allen Substation in Clark County, Nevada will be expanded to include one (1) 500 kV fixed series capacitor bank installed as a system upgrade to the Robinson Summit to Harry Allen 500 kV Line for 70% compensation of ON Line. Final details of the configuration will be defined in the Robinson Summit interconnection agreement between Project Sponsor and NV Energy. Based on the studies performed to date, it is currently expected that the installation may include reconfiguration of certain ON Line facilities at or near Harry Allen as well as all necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., enclosures, trenches, cables, fencing, walls, etc.).
- f) **Sub-synchronous Resonance (SSR) and Sub-synchronous Control Interaction (SSCI) Mitigation** – Project Sponsor is performing studies to identify potential impacts to generators and inverters in the region due to SSR or SSCI as a result of the five (5) fixed series capacitor bank system upgrades to be installed as part of the Project.

2. Transmission Interconnection Facilities

- a) **Midpoint Substation – Transmission Interconnection Facilities** will be required at the Midpoint Substation to accommodate the interconnection of the Midpoint to Robinson Summit 500 kV Line. Final details of the configuration will be defined in an interconnection agreement between Project Sponsor and Idaho Power Company. Based on the Idaho Power Company studies performed to date, it is currently expected that the scope will include the addition of a 500 kV breaker-and-a-half bay and the necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., trenches, cables, fencing, walls, etc.).
- b) **Robinson Summit Substation - Transmission Interconnection Facilities** will be

required at the Robinson Summit Substation to accommodate the interconnection of the Midpoint to Robinson Summit 500 kV Line. Final details of the configuration will be defined in an interconnection agreement between Project Sponsor and NV Energy. Based on the NV Energy studies performed to date, it is currently expected that the scope will include the addition of a two (2) 500 kV breaker-and-a-half bays and the necessary circuit breakers, disconnect switches, buswork, metering voltage and current transformers, CCVTs, arresters, and other appurtenant facilities (e.g., trenches, cables, fencing, walls, etc.).

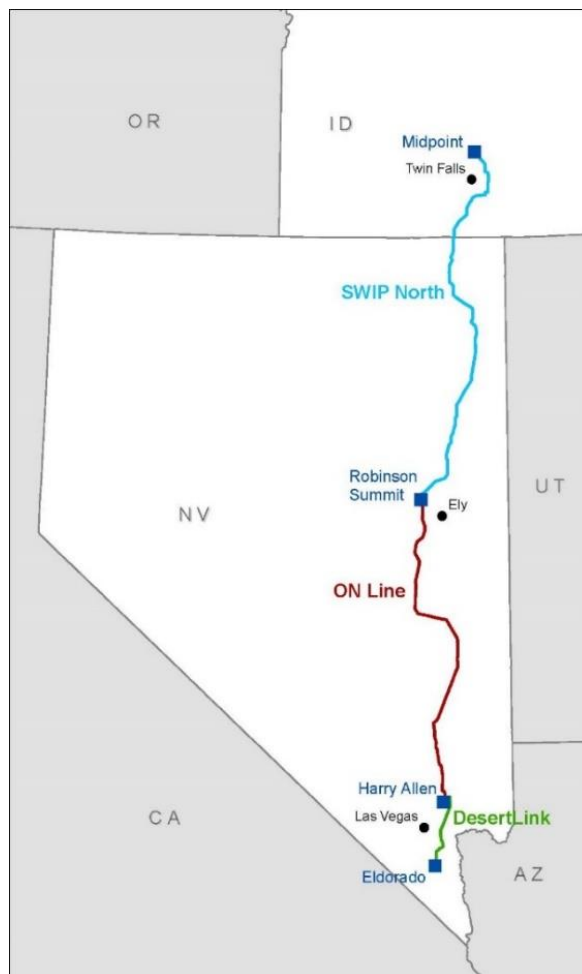
3. Network Upgrades

None.

4. Distribution Upgrades

None.

5. Diagram of Project:



Appendix B

Milestones

1. Milestone Dates

| Item | Milestone | Responsible Party | Due Date ^{1/} |
|------|---|-------------------|---|
| 1 | Commence development activities including commencement of regulatory approvals; acquisition of land; and permits | Project Sponsor | Milestone achieved |
| 2 | Commence engineering design | Project Sponsor | Milestone achieved |
| 3 | Commence procurement including material and resources | Project Sponsor | Milestone achieved |
| 4 | Submit request for Transmission Interconnection Service to the applicable Interconnecting Entities | Project Sponsor | Milestone achieved |
| 5 | Submit a Participating TO application for the Project to the CAISO in accordance with Section 4.3.1.1 of the CAISO Tariff | Project Sponsor | Milestone achieved |
| 6 | Submit Initial Construction Plan in accordance with Section 5.3.1 of this Agreement | Project Sponsor | January 2, 2025 |
| 7 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | March 17, 2025 June 16, 2025 |
| 8 | Submit Project specifications in accordance with Section 5.4.1 of this Agreement | Project Sponsor | As applicable |
| 9 | Provide comments on Project specifications in accordance with Section 5.4.1 of this Agreement | CAISO | 20 days after submission by Project Sponsor |
| 10 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | September 15, 2025 |
| 11 | Execute agreements with applicable Interconnecting Entities | Project Sponsor | October 1, 2025 |
| 12 | Engineering design substantially complete | Project Sponsor | December 1, 2025 |



| Item | Milestone | Responsible Party | Due Date ^{1/} |
|------|---|-------------------|--|
| 13 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | December 15, 2025 |
| 14 | Complete substantive permitting activities in accordance with Section 5.5.1 of this Agreement | Project Sponsor | February 1, 2026 |
| 15 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | March 16, 2026 June 15, 2026 |
| 16 | Commence Construction | Project Sponsor | June 30, 2026 |
| 17 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | September 15, 2026 |
| 18 | Procurement substantially complete including material and resources | Project Sponsor | October 1, 2026 |
| 19 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | December 15, 2026 |
| 20 | Submit final Project specifications in accordance with Section 5.4.2 of this Agreement | Project Sponsor | 180 days prior to initial energization |
| 21 | Provide comments on final Project specifications in accordance with Section 5.4.2 of this Agreement | CAISO | 30 calendar days after submission by Project Sponsor |
| 22 | Submit Construction Plan Status Report in accordance with Section 5.3.2 of this Agreement | Project Sponsor | March 15, 2027 June 15, 2027 September 15, 2027 December 15, 2027 March 15, 2028 |
| 23 | Construction substantially complete | Project Sponsor | May 1, 2028 |
| 24 | Project energization and CAISO Operational Control of CAISO Entitlements “COD”) | Project Sponsor | June 1, 2028* |
| 25 | In accordance with Section 5.6.2 provide final “as-built” drawings, information and other documents | Project Sponsor | 120 days after COD |
| 26 | In accordance with Section 5.6.1 provide final costs of the Project | Project Sponsor | 1 year after COD |

^{1/} Dates in this Appendix B are good faith estimates and can be modified by written

agreement between any of the representatives listed in Appendix D to this Agreement without further regulatory approval, except that modifications to dates denoted with an asterisk (*) require an amendment to this Agreement pursuant to Section 25.10.

Appendix C

Security Arrangements Details

Infrastructure security of CAISO Controlled Grid equipment and operations and control hardware and software is essential to ensure day-to-day CAISO Controlled Grid reliability and operational security. FERC will expect the CAISO, and Project Sponsor interconnected to the CAISO Controlled Grid to comply with Applicable Reliability Standards. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

The Project Sponsor shall meet the requirements for security implemented pursuant to the CAISO Tariff, including the CAISO's standards for information security posted on the CAISO's internet web site at the following internet address:

<http://www.aiso.com/pubinfo/info-security/index.html>.

Appendix D

Addresses for Delivery of Notices and Billings

Notices:

Project Sponsor:

Great Basin Transmission, LLC
Attn: Project Manager
16150 Main Circle Drive, Suite 310
Chesterfield, MO 63017

With a copy to:

Great Basin Transmission, LLC
Attn: Legal Department
16150 Main Circle Drive, Suite 310
Chesterfield, MO 63017

CAISO:

California ISO
Attn: Infrastructure Contracts & Management
250 Outcropping Way
Folsom, CA 95630

RegulatoryContracts@caiso.com

Alternative Forms of Delivery of Notices (telephone or e-mail):

Project Sponsor:

Mark D. Milburn
mmilburn@lspower.com
legalnotices@lspower.com
(636) 532-2200

CAISO:

Deb Le Vine
dlevine@caiso.com
(916) 351-2144

RegulatoryContracts@caiso.com



Appendix E

Project Sponsor's Costs of Project

The estimated cost components for the Project are as follows:

| Estimated Project Sponsor's Costs | Amount |
|--|------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| Project Cost Estimate (excluding AFUDC) | \$1,230,000,000 |
| | |
| | |
| | |
| | |

The estimated capital cost for the Project is \$1,230 million ("Project Cost Estimate") which excludes allowance for funds used during construction ("AFUDC"). CAISO and Project Sponsor acknowledge that substantial development progress has already been achieved for SWIP-North, significantly de-risking the Project for CAISO ratepayers. In order to prudently manage any potential cost escalations, the CAISO will meet and confer with Project Sponsor should the then-estimated capital cost for the Project exceed 10% of the Project Cost Estimate. Nonetheless, Project Sponsor agrees to the following provisions which will further reduce uncertainty and mitigate the risks of cost escalation.

Regulatory Matters and Reporting

1. Project Sponsor shall assign 22.831% of SWIP-North and the Excluded Entitlements (as defined herein) to GBTN prior to CAISO Operational Control.
2. Cost-related decisions for the Project will be consistent with Good Utility Practice, and will be subject to prudence review at FERC pursuant to a FERC-approved formula rate structure.
3. Project Sponsor will accept the return on equity and capital structure that is deemed just and reasonable by FERC.



4. Project Sponsor will not seek to recover Construction Work in Progress in ratebase during development or construction of the Project.
5. If the projected capital cost reported by Project Sponsor is ten percent (10%) or more above the Project Cost Estimate, then: (a) Project Sponsor shall provide a written report to CAISO specifying the reasons for the projected cost increase and any additional steps Project Sponsor plans to take to manage future capital costs, and (b) CAISO shall confer with Project Sponsor regarding the report and shall review the projected increase to evaluate if Project Sponsor's estimate is reasonable.
6. Subject to Article 19 herein, Project Sponsor agrees to provide transparency for CAISO stakeholders associated with the construction progress and costs of the Project as follows:
 - (a) Project Sponsor shall participate in CAISO's quarterly Transmission Development Forum which is open to all stakeholders;
 - (b) Project Sponsor shall provide with its confidential construction status reports, as required by Section 5.3.2 herein, a public-facing executive summary that CAISO may use at its discretion in any CAISO stakeholder engagement process, and that describes project development and construction status, planned schedule for completion, actual capital costs incurred, projected costs at completion, comparison of projected costs to the Project Cost Estimate, and an estimate of the projected AFUDC at completion;
 - (c) Project Sponsor shall participate in meetings at the request of CAISO to discuss the project status and cost estimates; and
 - (d) Project Sponsor acknowledges that data provided to stakeholders pursuant to this Appendix E may be used by stakeholders in other processes or proceedings, including, without limitation, the Department of Energy, FERC, CAISO, or CPUC proceedings, subject to compliance with confidentiality and/or CEI procedures.

Lands and Environmental

1. Project Sponsor will use approximately 227 miles of rights-of-way granted by the U.S. Bureau of Land Management ("BLM"), including serial numbers NVN-49781, NVN-85211 and IDI-26446, as may be modified by BLM from time to time if requested by Project Sponsor.
2. Project Sponsor will use approximately 58 miles of private easements for the Project.



3. Project Sponsor will use the Construction, Operation and Maintenance Plan (“COM Plan”) approved by BLM, as modified by BLM from time to time, to ensure all appropriate environmental mitigation measures are properly employed, including but not limited to, pre-construction surveys, seasonal avoidance, biological monitoring, paleontological monitoring, and cultural site mitigation as prescribed.
4. Project Sponsor will employ a third party environmental monitoring team to oversee contractor compliance with environmental requirements and the COM Plan, and that will report to Project Sponsor’s environmental and construction management teams. Project Sponsor will address ongoing environmental compliance in its quarterly reports as well as any environmental contamination or damage not covered by insurance.

Engineering, Procurement and Construction

1. Project Sponsor has a contract with POWER Engineers, Inc. (“POWER”) as the engineer of record for the Project. POWER has already achieved approximately a design basis of 75% or greater and has delivered an Issued for Bid design package to support a construction RFP. POWER was the engineer of record for ON Line and for the Harry Allen to Eldorado 500 kV Transmission Line (“DesertLink”).
2. Project Sponsor will use structures and conductor similar in design to those used for the ON Line, as approved by BLM.
3. Project Sponsor has executed a transmission line tubular steel structure supply agreement for the Project which includes a fixed price, subject to certain commodity indices, significant financial security, and schedule liquidated damages.
4. Project Sponsor has executed a transmission line conductor supply agreement for the Project which includes a fixed price, subject to certain commodity indices, significant financial security, and schedule liquidated damages.
5. Project Sponsor has executed a transmission line construction agreement for the Project which includes several key provisions and measures that will enable Project Sponsor to administer the agreement in a way that ensures a high level of cost containment for the work. These provisions and measures include but are not limited to:
 - Clear scope of work based on the Issued for Bid Design Package and updated with the Issued for Construction Package to minimize potential change orders.
 - Fixed lump sum price for the majority of the scope of work, and any items for which cost adjustments are allowed to be clearly identified.



- Financial security for payment and performance of 100% of the contract price.
 - Liquidated damages for failure to meet key contractual milestones.
 - Resource-loaded baseline schedule with agreed-upon construction sequence, durations and milestones.
 - Close monitoring and reporting of Project progress with progress payments made only upon completion of satisfactory progress.
 - Establishing rigorous change control processes to ensure prompt change notification, decision support, prudent approach, and cost agreement.
 - Project Sponsor reserves unilateral right to change scope to procure major equipment to optimize procurement cost and delivery certainty.
6. Project Sponsor will use IBEW 1245 as the primary source of labor for the Project where applicable. IBEW 1245 has established rates for several years in its current collective bargaining agreement, which includes a clause prohibiting a work stoppage by strike or lockout. IBEW 1245 was a major participant in construction of ON Line, as well as other Project Sponsor affiliate projects in the region.
7. Project Sponsor will employ a third party quality assurance team to monitor contractor's quality control activities, that will report to Project Sponsor's construction management team.
8. Project Sponsor will engage LS Power's corporate safety team to monitor and audit the contractor's safety performance, monitoring and reporting.
9. Project Sponsor will develop a comprehensive risk register and mitigation plans that will be used for the Project based on experience permitting, designing, procuring and constructing similar projects in the West and throughout the U.S., including ON Line and DesertLink.
10. Project Sponsor's development, permitting and construction team, including the assigned Project Executive Sponsor, have significant experience delivering similar projects in the West and in CAISO, including ON Line, DesertLink, and several LS Power Grid California projects. Project Sponsor's project management team and field construction management team will report to the Executive Sponsor, and will be responsible for implementing and managing the equipment supply and line construction contracts and the required deliverables, schedules and controls, including releases of authorization for procurement, construction and monitoring work.
11. Facilities studies for the interconnections at the Robinson Summit and Midpoint substations have been performed to identify the scope of Transmission Interconnection Facilities and system upgrades required to interconnect SWIP-North. Project Sponsor shall coordinate with NV Energy and Idaho Power



Company on the design of such facilities, and Project Sponsor will manage the majority of the design and procurement activities to streamline the procurement process and control equipment costs.

12. The WECC Path Rating process is complete and as of July 31, 2023, both SWIP-North and ON Line (i.e. SWIP-South) have protected Phase 3 path ratings. The plan of service used to evaluate the path rating, in conjunction with a large group of regional transmission owners, is consistent with the scope of facilities identified by Idaho Power Company and NV Energy in their respective facilities studies.

In accordance with Section 5.6.1, the Project Sponsor shall provide a summary of the final cost of the construction of the Project as soon as reasonably practicable within twelve (12) months of the completion of construction.

Attachment B – Appendix E to Development Agreement (Privileged)

Development Agreement

Between

Great Basin Transmission, LLC regarding SWIP-North Transmission Project

And

California Independent System Operator Corporation

November 22, 2024

**[ATTACHMENT CONSISTS OF PRIVILEGED MATERIAL REDACTED PURSUANT
TO 18 C.F.R. § 388.112]**

Attachment C – Form of Protective Order

Development Agreement

Between

Great Basin Transmission, LLC regarding SWIP-North Transmission Project

And

California Independent System Operator Corporation

November 22, 2024

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System)
Operator Corporation)

Docket No. ER25-_____

PROTECTIVE ORDER

(Issued)

1. Participants in this proceeding(s) may exchange documents or materials that are deemed to contain Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII), as those terms are defined herein. Accordingly, IT IS ORDERED THAT this Protective Order shall govern the use of all such material produced by, or on behalf of, any Participant in the above-captioned proceeding(s).
2. The Commission's regulations¹ and its policy governing the labelling of controlled unclassified information (CUI),² establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Protective Order provides that a Participant:
 - A. *may* designate as Privileged Material any material which customarily is treated by that Participant as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and
 - B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

¹ Compare 18 C.F.R. § 388.112, with 18 C.F.R. § 388.113. This Protective Order does not alter the respective requirements imposed by these sections on Privileged Material or CEII.

² *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

3. For the purposes of this Protective Order, the listed terms are defined as follows:

- A. Participant(s): As defined at 18 C.F.R. § 385.102(b).
- B. Privileged Material:³
 - i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Participant;⁴
 - ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Participant;⁵
 - iii. Any information contained in or obtained from such designated material;
 - iv. Any other material which is made subject to this Protective Order by the Presiding Administrative Law Judge (Presiding Judge) or the Chief Administrative Law Judge (Chief Judge) in the absence of the Presiding Judge or where no presiding judge is designated, the

³ The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

⁴ See *infra* P 11 for the procedures governing the labeling of this designation.

⁵ The Commission's regulations state that "[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . ." 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that "[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities." 18 C.F.R. § 385.410(d)(1)(i).

Federal Energy Regulatory Commission (Commission), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);

- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);⁶ or
- vi. Copies of Privileged Material.
- vii. Privileged Material does not include:
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order; or
- viii. Additional Subcategories of Privileged Material in Oil Pipeline Proceedings:
 - a. Section 15(13) Privileged Material:⁷ Any materials, permitted to be produced by this Protective Order, concerning the nature, kind, quantity, destination or routing of any products tendered or delivered to a Participant for interstate transportation by or on behalf of a specific shipper, when the identity of the shipper is contained in or may be

⁶ Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Protective Order.

⁷ Section 15(13) of the Interstate Commerce Act, 49 U.S.C. § 15(13), prohibits disclosure of information pertaining to the business activities of oil pipeline shippers or consignees. Participants disclosing such information in accordance with the terms of this Protective Order will be deemed to not have contravened the prohibitions of this statutory provision.

discerned from the material to be provided. This subcategory shall not apply if the shipper to whom such information pertains consents that the information be categorized as Privileged Material under the other provisions of this Protective Order or produced outside the scope of this Protective Order.

- b. Highly Confidential Privileged Material: A Participant may use this designation for those materials that are of such a commercially sensitive nature among the Participants or of such a private, personal nature that the producing Participant is able to justify a heightened level of confidential protection with respect to those materials.
- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The certificate attached to this Protective Order, by which Participants granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.
- E. Reviewing Representative:⁸ A person who has signed a Non-Disclosure Certificate and who is:
 - i. Commission Trial Staff designated as such in this proceeding;
 - ii. An attorney who has made an appearance in this proceeding for a Participant;

⁸ For oil pipeline proceedings involving the additional subcategories of Privileged Material, there shall also be Section 15(13) Reviewing Representatives and Highly Confidential Reviewing Representatives subject to the corresponding terms of this definition.

- iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;
- iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;
- v. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or
- vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.⁹

4. Privileged Material and/or CEII shall be made available under the terms of this Protective Order only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Order. The contents of Privileged Material, CEII or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Order.

6. Privileged Material and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Order. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may

⁹ In oil pipeline proceedings, individuals that have direct or supervisory responsibilities over the purchase, sale, marketing, or exchange of crude oil or petroleum products (including liquefied petroleum gases), are ineligible to qualify as a Reviewing Representative.

make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

8. If a Participant wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Order with respect to those materials. If no agreement is reached, the matter must be submitted to the Presiding Judge for resolution.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Protective Order until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.¹⁰ However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all

¹⁰ During this three-day period, a Participant may file an objection with the Presiding Judge or the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Privileged Material and/or CEII until resolution of the dispute.

Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.D of this Protective Order, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate for as long as the Protective Order is in effect.¹¹

11. All Privileged Material and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.¹² Consistent with those requirements:

- A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV.¹³ Any corresponding electronic files must also include this text in the file name.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.

¹¹ See *infra* P 19.

¹² 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

¹³ The parties in oil pipeline proceedings may desire additional protection in their handling of the following types of material as defined in this Protective Order: Section 15(13) Privileged Material; and Highly Confidential Privileged Material. Participants may incorporate these descriptive subcategories into their document labels as needed (e.g., CUI//PRIV-Section 15(13) or CUI//PRIV-HC).

- C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.
- D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with “BEGIN CUI//CEII/PRIV” and “END CUI//CEII/PRIV”.

12. If any Participant desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Presiding Judge, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Presiding Judge.

13. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

14. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Order should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Order. The Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

15. Each Participant governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

16. Subject to Paragraph 18, the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Order pertaining to Privileged Material

according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

- A. Any Participant that contests the designation of material as Privileged Material shall notify the Participant that provided the Privileged Material by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Participant seeking protection. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.
- C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, the Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Order shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Participant waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

18. Privileged Material and/or CEII shall remain available to Participants until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Privileged Material and/or CEII may request (in writing) that all other Participants return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Order. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Order.

19. Regardless of any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the “[d]uration of the CEII designation” provisions of 18 C.F.R. § 388.113(e).

20. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

Revised May 11, 2020

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Name of Proceeding

Docket No.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material¹ and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

¹ If applicable, for pipeline proceedings involving additional subcategories of Privileged Material, the signatory should indicate here whether this Non-Disclosure Certificate additionally governs access to:

☐ : Section 15(13) Privileged Material

☐ : Highly Confidential Privileged Material

Revised May 11, 2020